



Business
OMBUDSMAN
Council

01 July – 30 September **2020**

QUARTERLY REPORT

REPORT FOCUS:

**NON-ENFORCEMENT
OF COURT DECISIONS**



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The BOC and the Council are used interchangeably throughout the text to refer to the Business Ombudsman Council.



FOREWORD OF THE BUSINESS OMBUDSMAN

DEAR FRIENDS, COLLEAGUES AND PARTNERS,

Despite the fact that quarantine affected many aspects of entrepreneurial activity and forced to reduce its pace, the number of business appeals to the Business Ombudsman Council regarding violations of state officials has not decreased. In July-September 2020, we received 439 complaints — this is 14% more than in Q2 2020 and 3% more than in Q3 2019. However, in the reporting quarter we did not actually receive any complaints related to quarantine restrictions — business was obviously dissatisfied with some limitations introduced at the time of the pandemic, but did not consider them illegal.

The number of complaints increased specifically due to small and medium-sized enterprises (SMEs). In the reporting quarter, the share of appeals from SMEs has reached a record level since launch of the BOC operations — 79%. We received 90% of complaints from purely Ukrainian enterprises — it has also been the highest figure since May 2015. 98% of complainants who responded to our inquiry for feedback were satisfied with our cooperation. During these three months, we helped entrepreneurs recover and save UAH 299 mn.

Key business complaints trends in Q3 2020:

- The number of complaints from entrepreneurs concerning suspension of tax invoices registration increased considerably (from 138 in Q2 2020 to 201 in Q3 2020): this is 46% more than in the previous quarter and 118% more than in the same quarter last year.
- At the same time the number of tax audit findings appeals went down significantly (from 55 to 36) — it is correlated with the moratorium on most inspections introduced by the Government in March this year.
- Compared to the previous quarter, entrepreneurs complained more about procedural abuse of the Prosecutor's Office, but less about malpractice of the National Police and the State Security Service of Ukraine. Therefore, the total number of complaints about law enforcement agencies remained flat at 48 complaints.
- The number of entrepreneurs' appeals regarding customs clearance delays has doubled (from 13 to 22). Thus, customs issues hit TOP-3 list of business appeals with 22 complaints in total.
- Entrepreneurs filed twice more (from 8 to 16) complaints against the Ministry of Justice actions: both against the Registration Department and the Enforcement Service.

Since launch of its operations, the BOC considered 564 complaints related to court decisions enforcement. Hence, the number of complaints has been increasing annually: from 56 in 2017 to 197 in 2019. During the first nine months of 2020 we received 149 complaints on this subject. Non-enforcement of court decisions by state bodies is indeed a serious issue for business, since coercive mechanisms applicable to individuals and legal entities are not working in the case of state bodies responsible for court decisions execution. That is why we have chosen this issue for its more in-depth analysis and preparation of respective systemic recommendations for state bodies in the upcoming systemic report to be published in early 2021.

We have another positive performance indicator this quarter — state bodies implemented 89% of individual recommendations. In addition, we would like to note two systemic wins of the BOC:

- According to our recommendations on foreign economic trade in scrap metal, the Parliament adopted the Law No.776-IX aimed at de-shading of the market and increasing transparency of scrap metal import and export.
- The President signed the Law No.2698, which aims to harmonize construction products domestic market functioning with European rules — exactly as we recommended in the systemic report.

Such a small number of implemented recommendations, however, does not reflect a full scope of work on solving systemic business issues, particularly as regards administrative appeal and tax administration, as we cooperated with government experts and Deputies of the Verkhovna Rada on preparation of concrete legislative changes during the quarter. We would like to remind that in July

2019 we issued 54 recommendations to state bodies on administrative appeal procedure and 38 on tax administration in August 2020. We hope our developments will be transformed into certain legal acts soon.

We actively shared our practical experience and professional expertise with business representatives and legal professionals. Jointly with the Ministry for Economic Development, Trade and Agriculture, we held a series of regional webinars on the BOC opportunities to protect interests of entrepreneurs. Together with the American Chamber of Commerce and the National Bar Association of Ukraine we discussed business issues at the customs, appealing results of public procurement, non-enforcement of court decisions, Tax Police actions and pressing tax issues of entrepreneurs.

We continued working with stakeholders to enshrine our institution's status at the legal level. Independent experts from V.M.Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine analyzed the Draft Law No. 3607 "On the Business Ombudsman Institution in Ukraine" and supported its key provisions. The document is currently in the Parliament and is awaiting the first reading at the plenary meeting. So far, three Verkhovna Rada Committees supported the bill: the Committee on Economic Development, Committee on Anti-Corruption Policy, and Committee on Ukraine's Integration into the European Union.

As long as the draft law is extraordinary, it is challenging and brings up questions and sometimes hesitations. Therefore, we carefully consider all comments, prepare responses to them and actively raise awareness to maximize clarity and dispel any doubts about fundamental provisions of the law.

Marin Fungel

Q3 2020 AT A GLANCE

439

COMPLAINTS
RECEIVED

274

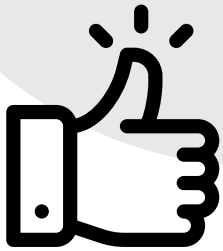
CASES
CLOSED

+54

appeals
QOQ

+11

appeals
YOY



98%

OF COMPLAINANTS
WHO PROVIDED
FEEDBACK WERE
SATISFIED WITH
WORKING WITH
THE BOC

89%

OF CASE-BY-CASE
RECOMMENDATIONS
WERE IMPLEMENTED
BY STATE BODIES



DIRECT FINANCIAL
IMPACT:

UAH **299** MN

TOP-5 BLOCKS OF COMPLAINTS

68%

Tax issues

11%

Actions of law
enforcement bodies

5%

Customs
issues

5%

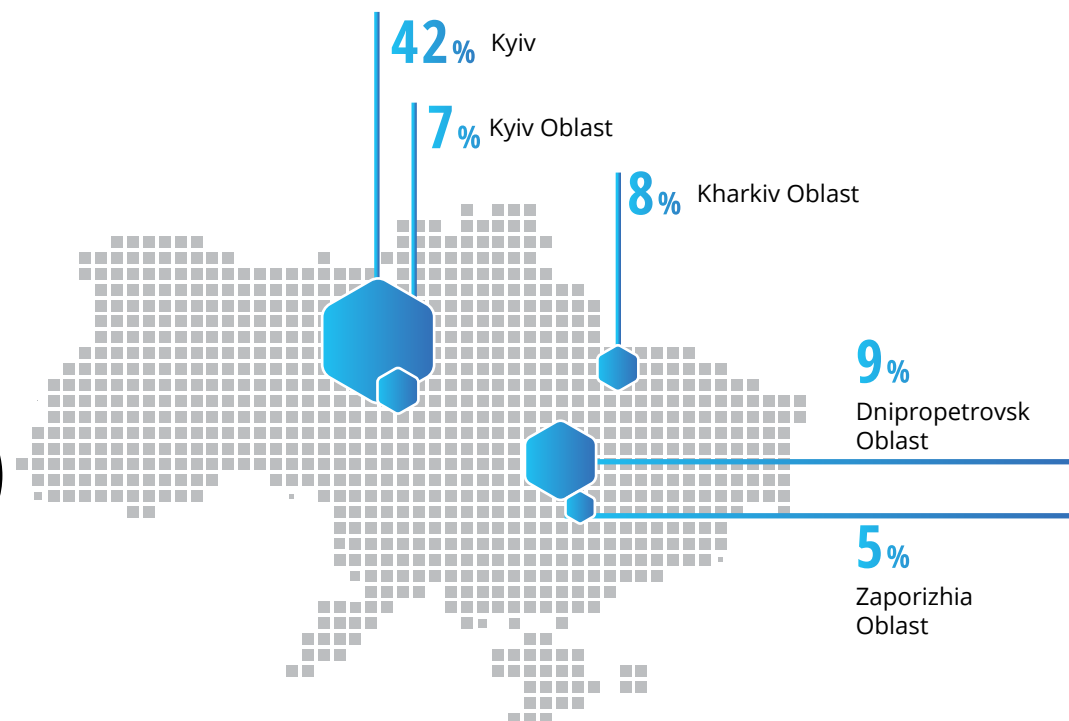
Actions of state
regulators

4%

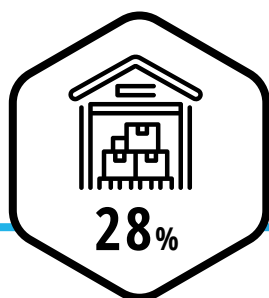
Actions of the Ministry
of Justice

TOP-5

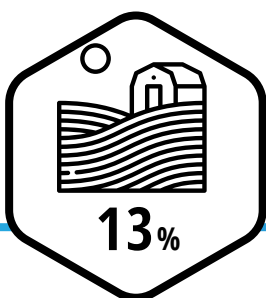
MOST ACTIVE
REGIONS



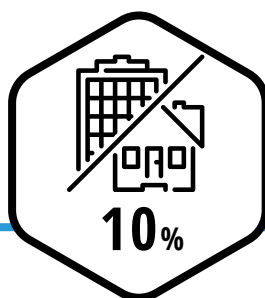
TOP-5 INDUSTRIES



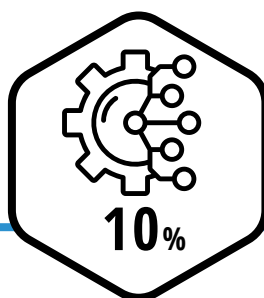
Wholesale and
Distribution



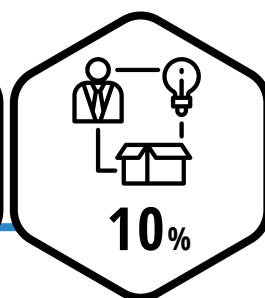
Agriculture and
Mining



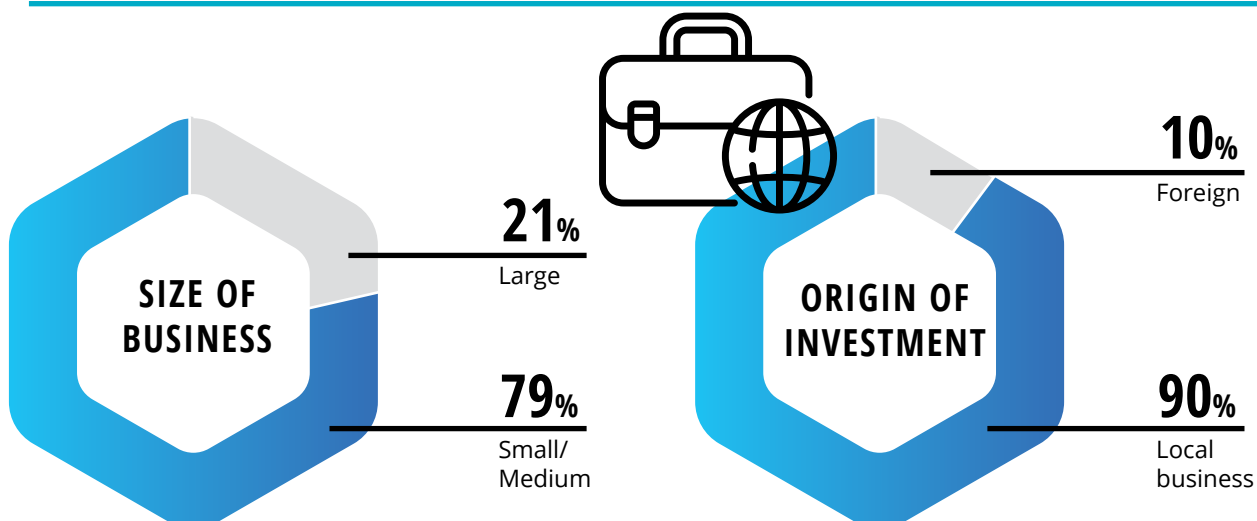
Real Estate
and Construction



Manufacturing



Individual
Entrepreneur

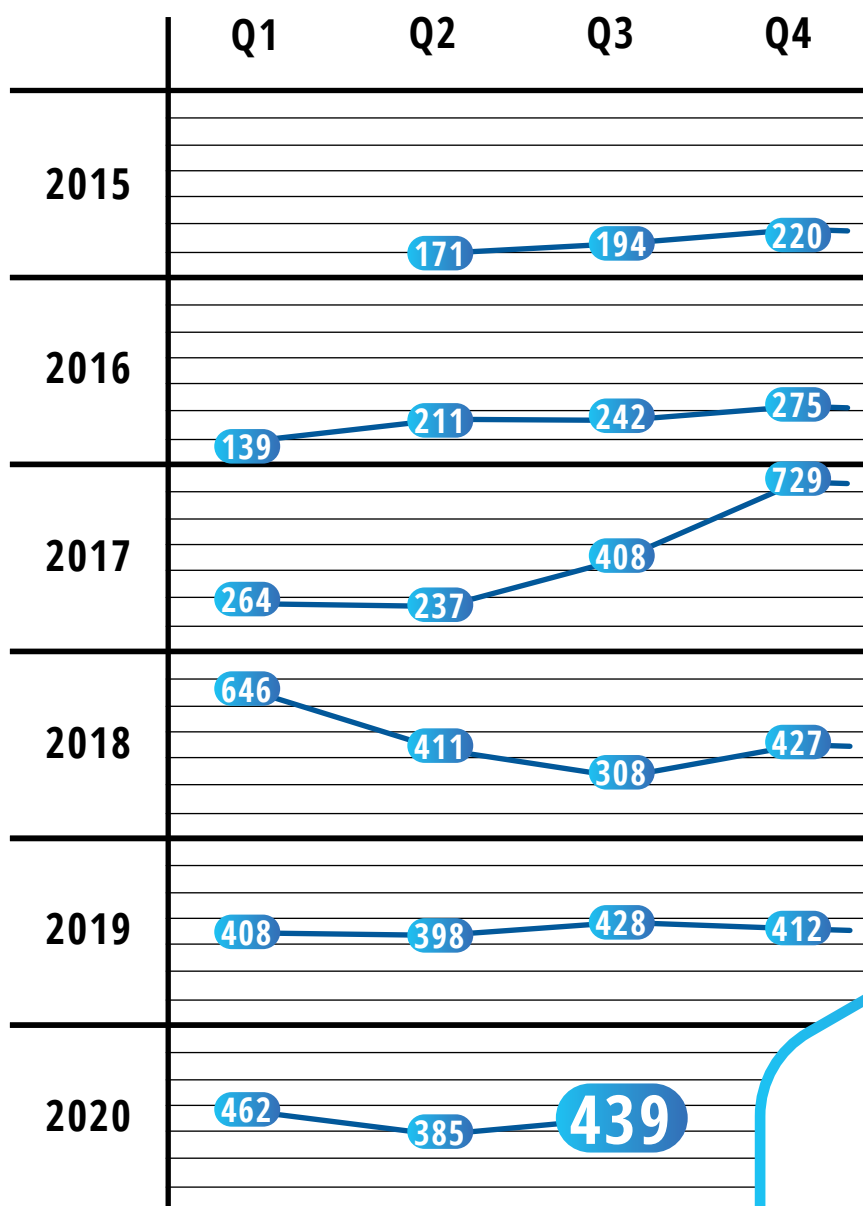


1. COMPLAINTS TRENDS

1.1. VOLUME AND NATURE OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)

VOLUME OF COMPLAINTS RECEIVED



In July-September 2020,
the BOC received

439

appeals from
entrepreneurs
concerning malpractice
of state bodies.

14%

more as compared
to Q2 2020 (QOQ)

3%

more as compared
to Q3 2019 (YOY)

**TOTAL NUMBER
OF COMPLAINTS
RECEIVED SINCE
MAY 2015:**

7814

TOP-10

SUBJECTS OF COMPLAINTS IN Q3 2020

SUBJECT	Q3 2020	Q2 2020	Q3 2019
TAX ISSUES	297	261	264
Complaints related to SMKOR operation:	201	138	92
VAT invoice suspension	102	53	16
VAT risky taxpayer	64	64	45
VAT invoice court decision	35	21	31
Tax inspections	36	55	99
Tax criminal cases	16	7	15
VAT electronic administration	12	17	17
VAT refund	4	1	2
Tax termination/renewal/refusal of VAT payers registration	1	2	0
Tax termination of agreement on recognition of electronic reporting and Tax status 09	0	0	3
Tax other	27	41	36
ACTIONS OF THE NATIONAL POLICE	24	29	23
National Police procedural abuse	12	16	8
National Police inactivity	10	10	9
National Police criminal case initiated	1	0	3
National Police corruption allegations	1	0	1
National Police other	0	3	2
ACTIONS OF STATE REGULATORS	21	18	27
Antimonopoly Committee (AMCU)	4	4	3
State Architectural and Construction Inspectorate (DABI)	1	4	4
National Energy and Utilities Regulatory Commission (NEURC)	1	0	1
National Bank of Ukraine (NBU)	1	0	
StateGeoCadastre	0	0	4
Other state regulators	14	10	15

SUBJECT	Q3 2020	Q2 2020	Q3 2019
CUSTOMS ISSUES	22	13	27
Customs valuation	7	7	8
Customs clearance delay/refusal	13	4	9
Overpaid customs duties refund	0	0	2
Customs other	2	2	8
ACTIONS OF THE PROSECUTOR'S OFFICE	19	12	19
Prosecutor's Office procedural abuse	16	6	14
Prosecutor's Office inactivity	2	2	2
Prosecutor's Office corruption allegations		1	
Prosecutor's Office criminal case initiated		3	2
Prosecutor's Office other	1		1
ACTIONS OF THE MINISTRY OF JUSTICE	16	8	15
MinJustice Registration Service	11	6	12
MinJustice Enforcement Service	5	2	3
ACTIONS OF LOCAL GOVERNMENT AUTHORITIES	14	8	13
Local government authorities land plots	6	2	1
Local government authorities rules and permits	2		3
Local government authorities other	6	6	9
ACTIONS OF THE STATE SECURITY SERVICE	5	7	3
State Security Service procedural abuse	2	5	
State Security Service inactivity	1	1	
State Security Service criminal case initiated	2		
State Security Service other		1	3
ACTIONS OF STATE COMPANIES	3	7	4
State companies investment/commercial disputes		4	
State companies abuse of authority	2	3	4
State companies other	1		0
LEGISLATION DRAFTS/AMENDMENTS	3	5	4
Deficiencies in regulatory framework state regulators	1	2	2
Deficiencies in regulatory framework tax		1	
Deficiencies in regulatory framework other	2	2	2

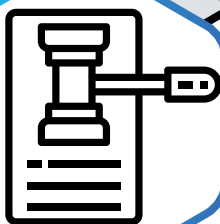
TAX ISSUES

Tax related business appeals were the key driver of the upward trend of total complaints: they gained +13% QOQ and +12% YOY.

We received 102 complaints regarding suspension of tax invoices, which is twice more as compared to Q2 2020 and six times more as compared to Q3 2019. The number of appeals concerning inclusion of tax payers in high-risk lists remained at a high level of 64 appeals. Entrepreneurs lodged 35 appeals with the BOC concerning non-enforcement of court decisions on registration of tax invoices — this is 60% more QOQ and 11% more YOY. 201 appeals concerning different aspects of VAT invoice suspension ranked TOP-3 of our complaints. Their total share amounted to 46% of all appeals received by the BOC in Q3 2020.

Businesses filed 16 complaints with respect to ungrounded criminal cases, which is over twice more than in Q2 2020 and 7% more than in Q3 2019. We also received 4 appeals regarding the VAT refund — which is more as compared to both periods in the focus of analysis.

At the same time, we recorded a decrease in the number of complaints concerning tax inspections: -35% in comparison with Q2 2020 and -64% with Q3 2019. This reflects the Government initiative to prolong moratorium on inspections with respect to the COVID-19 lockdown. We also received one third less appeals regarding VAT electronic administration as compared to both Q2 2020 and Q3 2019.



ACTIONS OF LAW ENFORCEMENT BODIES

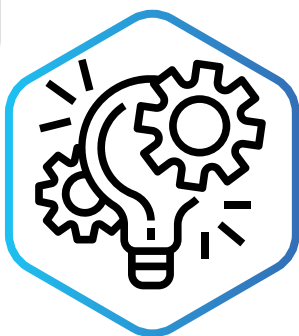
In total, in Q3 2020, we received 48 appeals concerning malpractice of law enforcers — exactly the same number as in the previous quarter. However, trends of appeals varied depending on the law enforcement body.

Businesses lodged 20% less complaints concerning the National Police QOQ, but +4% more YOY. A half of complaints (12 appeals) with respect to actions of the National Police dealt with the procedural abuse of its officials, another major

part (10 appeals) — with their inactivity.

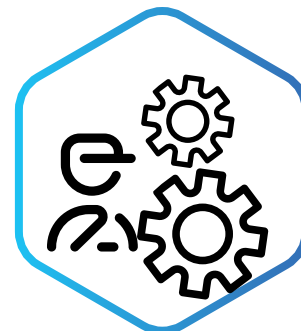
The number of complaints concerning the Prosecutor's Office went up QOQ (+73%), but remained stable YOY at the level of 19 appeals. The majority of cases featured procedural abuse of prosecutors.

As for the State Security Service, we only received 5 complaints from business against this state body. This is two appeals less QOQ, but two more YOY.



ACTIONS OF STATE REGULATORS

We received 21 appeals with respect to state regulators: this is 22% more QOQ, but 17% less YOY. In Q3 2020, two blocks of appeals — actions of state regulators and customs issues share the third position by the number of appeals.



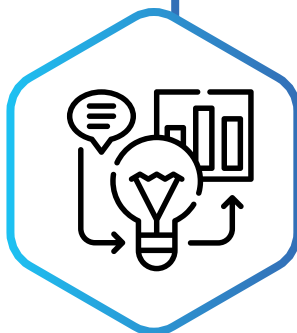
CUSTOMS ISSUES

As compared to Q2 2020, the number of appeals concerning customs issues went up by 69% — from 13 to 22 complaints. In the majority of cases, businesses complained on delays in customs clearance (13 appeals), disagreed with the customs valuation (7 cases).



THE MINISTRY OF JUSTICE

In comparison with Q2 2020, companies lodged twice more (from 8 to 16) appeals regarding the Ministry of Justice. Malpractice of the Registration Service was filed in 11 cases, while actions of the Enforcement Service were in the focus of 5 complaints.



OTHER ISSUES

As compared to Q2 2020, a 75% increase in the number of appeals is recorded for local government authorities — from 8 to 14 appeals. In particular, companies complained about allocation of land plots and obtaining permits. At the same time, the number of complaints on state companies and amendments to legislation went down by 57% and 40% respectively.



1.2. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

(Clause 5.3.1 (b) of Rules of Procedure)

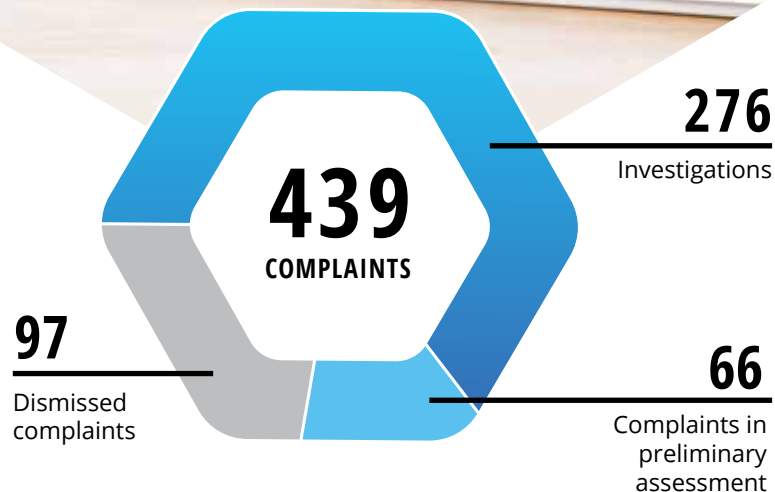
In the reporting quarter,
the average time for preliminary
review of a complaint was

7.7 WORKING DAYS

which is two days less than envisaged in
our Rules of Procedure — the time for
preliminary review should not exceed 10
working days.

1.3. NUMBER OF INVESTIGATIONS CONDUCTED AND GROUNDS FOR DISMISSING COMPLAINTS

(Clause 5.3.1 (c)
of Rules of Procedure)



In Q3 2020, the BOC undertook 276 investigations, which is 13% more than in the previous quarter. This equals 63% of complaints received. The rest of appeals remained at the stage of preliminary assessment (15%) or were dismissed as not fitting the Council's eligibility criteria (22%) as of September 30, 2020.

NUMBER OF INITIATED INVESTIGATIONS:

Q3 2020	276
Q2 2020	245
Q3 2019	255

RATIO OF DISMISSED COMPLAINTS:

Q3 2020	— 22%
Q2 2020	— 23%
Q3 2019	— 31%

MAIN REASONS FOR COMPLAINTS DISMISSAL IN Q3 2020

	Q3 2020	Q2 2020	Q3 2019
Complaints outside Business Ombudsman's competence	51	58	63
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	15	13	10
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	10	17	37
The complaint had no substance, or other agencies or institutions were already investigating such matter	6	6	13
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	3	4	3
The party affected by the alleged Business Malpractice has not exhausted at least one instance of an administrative appeal process	2		3
Complaints arising in the context of private-to-private business relations		1	3
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings		3	3
All other	10	5	11

The predominant reason (53%) for complaints dismissal — they were outside the Business Ombudsman's competence. Lack of cooperation from the complainant's side (15%) and active court proceedings (10%) were also common in Q3 2020.



WE TRULY THANK YOU FOR YOUR EFFORTS AND PROFESSIONALISM IN THE WORK THAT RESULTS IN SUPPORT AND PROTECTION OF BUSINESS INTERESTS IN GOVERNMENT AGENCIES. THE BUSINESS OMBUDSMAN INSTITUTION IS UNDOUBTEDLY AN EFFECTIVE ADVOCATE OF BUSINESS WITH STATE INSTITUTIONS, IN PARTICULAR LOCAL GOVERNMENT AUTHORITIES. THE INVESTIGATOR IN CHARGE ORGANIZED THE CASE CONSIDERATION PROPERLY BY USING ALL POSSIBLE COMMUNICATION TOOLS FOR ESTABLISHING A DIALOGUE WITH THE REPRESENTATIVES OF DNIPO CITY COUNCIL.

TETIANA POPOVA
HEAD OF THE COUNCIL ASSOCIATION OF THE
TELECOMMUNICATIONS CHAMBER OF UKRAINE

1.4.TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules
of Procedure)

In the reporting
quarter, the BOC
closed

274 cases

Average duration
of these
investigations was

76
days

which means that we fit our Rules
of Procedure's target investigation
duration of 90 days.

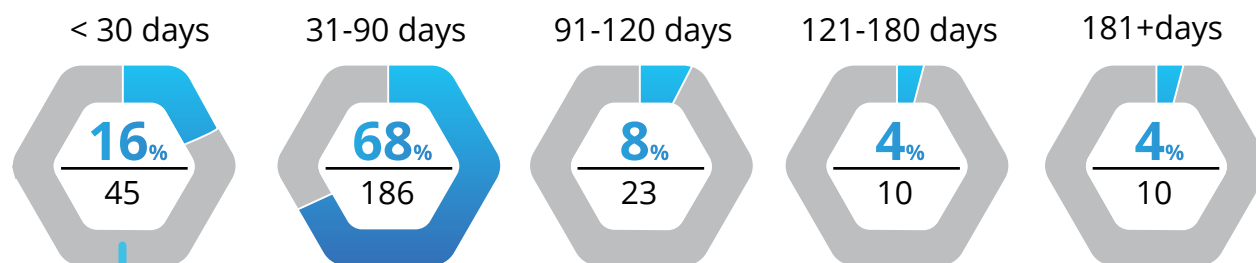
AVERAGE TIME FOR CONDUCTING INVESTIGATIONS:

Q3 2020 76 days

Q2 2020 75 days

Q3 2019 67 days

RATIO OF CLOSED CASES BY DAYS:



The majority
of cases — 231,
which is

84%

of all closed investigations in Q3 2020,
were investigated within 90 days, as
standardly envisaged in our Rules of
Procedure.

Individual extensions
were applied to 16%
of complaints.

1.5. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

TOP-10 COMPLAINNEES

	Number of complaints received in Q3 2020	Number of complaints received in Q2 2020	Number of complaints received in Q3 2019
State Tax Service	281	255	249
State Customs Service	22	13	27
State Fiscal Service (Tax Police)	16	7	15
National Police	25	30	23
Prosecutor's Office	18	11	19
Local government authorities	14	8	14
Ministry of Justice	18	8	15
State Security Service	6	7	3
State-owned enterprises	3	7	5
State Funds	4	1	1
Antimonopoly Committee of Ukraine	4	4	3
Other	5	1	6

We received 281 complaints concerning actions of the State Tax Service, which is 10% more than in Q2 2020 and 13% more than in Q3 2019. The number of appeals regarding the Tax Police doubled QOQ and slightly (+7%) increased YOY. We also observe a significant increase QOQ (+69%) in the number of complaints on actions of the state Customs Service, although YOY it declined by 19%.

With respect to law enforcement bodies: as compared to Q2 2020, companies lodged less appeals regarding the National Police (-17%) and the State Security Service (-14%), but 64% more concerning actions of the Prosecutor's Office.

The number of appeals featuring alleged malpractice of local government authorities was on the rise: +75% (from 8 to 14) in comparison with Q2 2020.

Actions of the Ministry of Justice was in the focus of a greater number of appeals as compared to Q2 2020: the number of appeals on this state body went up by 125% — from 8 to 18.

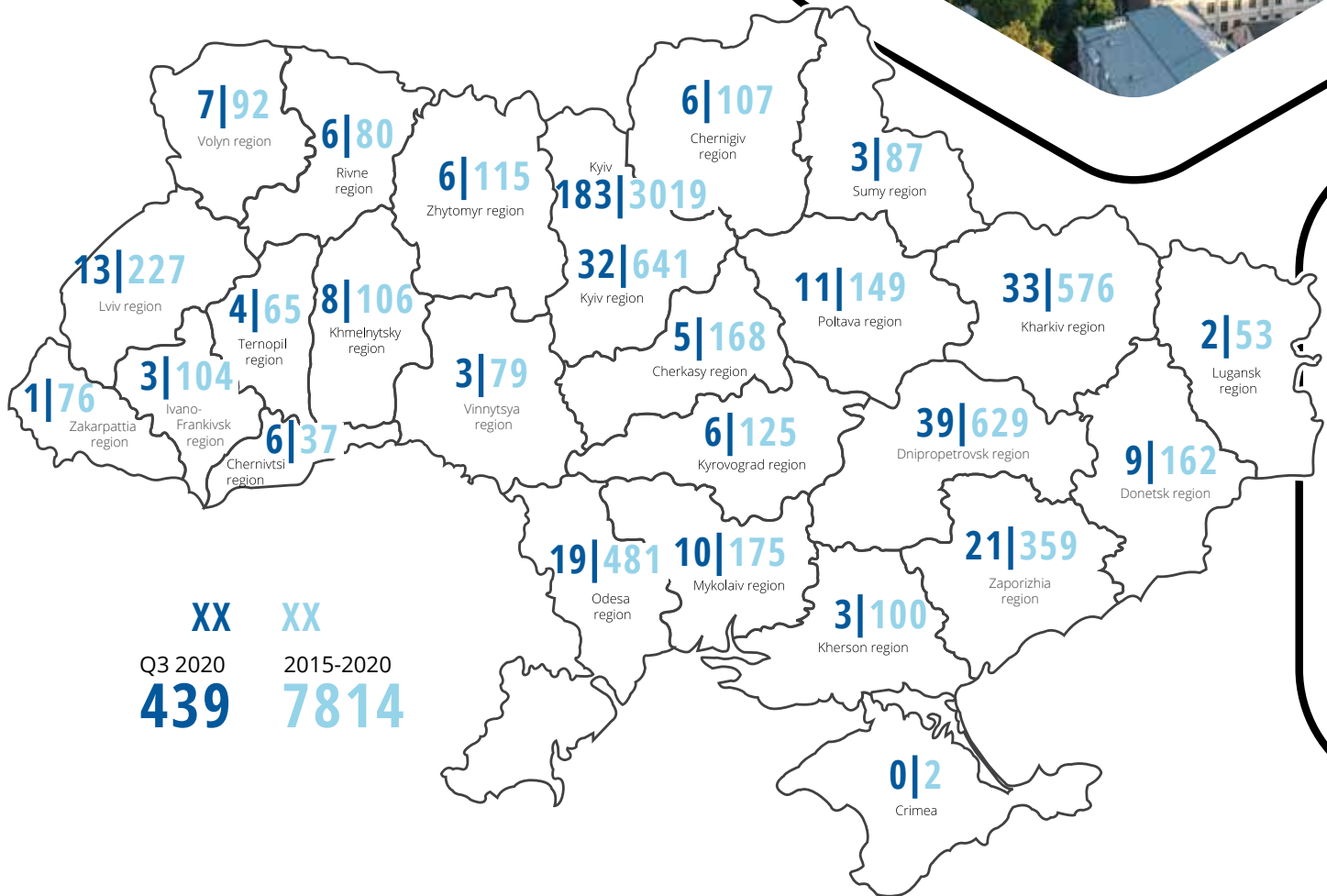
OTHER COMPLAINEES INCLUDE:

	Q3 2020	Q2 2020	Q3 2019
The Verkhovna Rada, the Cabinet of Ministers, the President of Ukraine	3	6	4
Ministry of Social Policy and Labor of Ukraine	3	5	4
State-owned enterprises	3	7	5
Ministry of Infrastructure of Ukraine	2	1	2
Ministry of Internal Affairs	2	1	-
Ministry for Communities and Territories Development of Ukraine	2	4	4
National Bureau of Investigation of Ukraine	2	3	4
Ministry of Ecology and Natural Resources of Ukraine	2	2	6
Ministry of Finance of Ukraine	1	2	3
Ministry of Health of Ukraine	1	1	1
National Bank of Ukraine	1	-	1
National Commission for State Regulation of Energy and Public Utilities	1	-	1

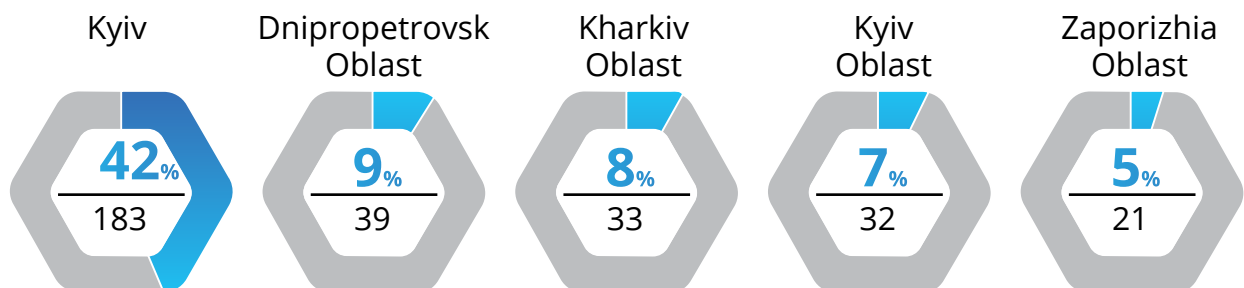
THANKS TO JOINT COOPERATION OF THE BUSINESS OMBUDSMAN COUNCIL AND THE ENTREPRISE'S ADMINISTRATION, SETTLEMENT OF THE DISPUTED ISSUE CONCERNING RECOGNITION OF A QUALIFYING PERIOD OF THE PJSC AZOVELEKTROSTAL'S EMPLOYEES TILL JUNE 2020 INCLUSIVE WAS POSSIBLE TO ACHIEVE. THE AGREEMENT WAS ALSO REACHED WITH THE STATE TAX SERVICE AND THE PENSION FUND OF UKRAINE ON THE PROCEDURE FOR REPAYMENT OF THE EXISTING SSC DEBT OF ENTERPRISES FOR THE DISPUTED PERIOD OF 2015-2017.

OLEKSII POPOV
DIRECTOR GENERAL OF THE PJSC AZOVELEKTROSTAL

1.6. GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



TOP-5 REGIONS



Complaints from three regions — the city of Kyiv, Dnipropetrovsk and Kharkiv Oblasts — amounted to 59% of all appeals received in Q3 2020. Kyiv Oblast was the fourth biggest region by the number of submitted complaints. With a 5% share Zaporizhzhya Oblast ousted Odesa from the TOP-5 list.

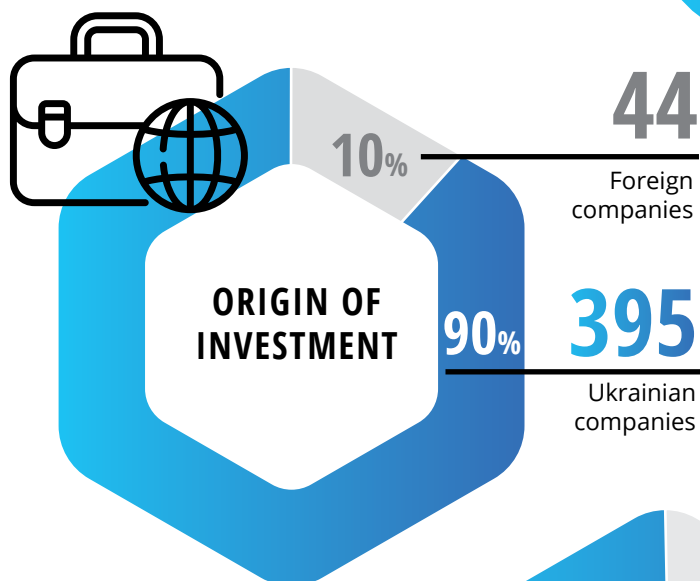
1.7. COMPLAINANTS' PORTRAIT

TWO NEW RECORDS

1

Given that out of 439 complaints received in Q3 2020, 395 came from Ukrainian companies, the share of Ukrainian business among our complainants reached 90%. This is the highest figure in the history of the BOC. In total, since launch of operations in May 2015, we have considered over 6600 appeals from local businesses.

LOCAL VS FOREIGN COMPLAINANTS



94

Large companies

2

SIZE OF BUSINESS

21%

79%

345

Small and medium enterprises

As for the size of business, in the reporting quarter the largest share — 79% of appeals — came from small and medium enterprises. This is also the highest ever share of SMEs in our portfolio of complainants. Since May 2015, we have processed over 5600 complaints from SMEs.



TOP-5 COMPLAINANTS' INDUSTRIES

WHOLESALE AND DISTRIBUTION

Number of
complaints
received in

**Q3
2020**

Number of
complaints
received in

**Q2
2020**

Number of
complaints
received in

**Q3
2019**

124

86

119

AGRICULTURE AND MINING

59

49

36

MANUFACTURING

44

55

61

REAL ESTATE AND CONSTRUCTION

43

40

35

INDIVIDUAL ENTREPRENEUR

42

40

40

ALL OTHER

127

115

137

As compared to Q2 2020, the number of complaints from wholesalers and distributors went up by 44% — from 86 to 124 appeals. In such a way their share gained 6 pp reaching 28% of total complaints in Q3 2020. We also received 10 more appeals from agriculture and mining business — its share rose to 13%. Other industries from the TOP-5 — manufacturing, real estate and construction, individual entrepreneurs — performed with a 10% share each in Q3 2020.

”

OUR PERSONNEL IS SINCERELY GRATEFUL TO THE BUSINESS OMBUDSMAN COUNCIL FOR ITS HELP AND PRESENTS ITS COMPLIMENTS. WE WOULD LIKE TO EXPRESS A SPECIAL GRATITUDE TO THE INVESTIGATOR IN CHARGE, WHO WAS DEALING WITH THE ISSUE AND DID AS MUCH AS POSSIBLE (WITHIN THE LAW AND THE POWERS GRANTED TO HIM) TO ENSURE THE OBJECTIVE AND LEGAL DECISION TO BE TAKEN BY LAW ENFORCEMENT AGENCIES.

B. SMOLIY
ATTORNEY, REPRESENTATIVE OF AGROCOMPLEX LLC
AND PLISKY-AGRO LLC

OTHER INDUSTRIES INCLUDE:

Auto transport	17	Activities in the field of culture and sports, recreation and entertainment	2
Retail	15	Electric installation works	2
Forestry and logging	8	Tourism and travel-related services	2
Physical Person	7	Activity in the field of architecture	2
Other	6	Advertising	2
Repair and Maintenance Services	5	Consulting	2
Farming	5	Activities in the field of employment	1
Construction	5	Private security firms activity	1
Activity in the field of law	4	Activity of holding companies	1
Energy and Utilities	4	Fishing services	1
Health, Pharmaceuticals, and Biotech	4	IT companies	1
Maintenance of buildings and territories	3	Education	1
Public Organizations	3	Non-state pension provision	1
Waste collection and disposal	3	Freight maritime transport	1
Financial Services	3	Printing and reproduction activity	1
Engineering, geology and geodesy areas activity	3	Accommodation services	1
Hire, rental and leasing	3	Technical testing and research	1
Transportation and Storage	2	Information and Telecommunications	1
Scientific research and development	2	Oil and Gas	1

1.8. NON-EXECUTION OF COURT DECISIONS

The issue of executing court decisions in Ukraine has always been one of the most pressing and resonant topics in private and public sectors. Being an integral criterion in assessing compliance with the rule of law, execution of judgments in the state is subject to continuous improvement through correction and adjustment of the relevant legal framework and procedures.

As of September 30, 2020, since launch of operations, the BOC has processed

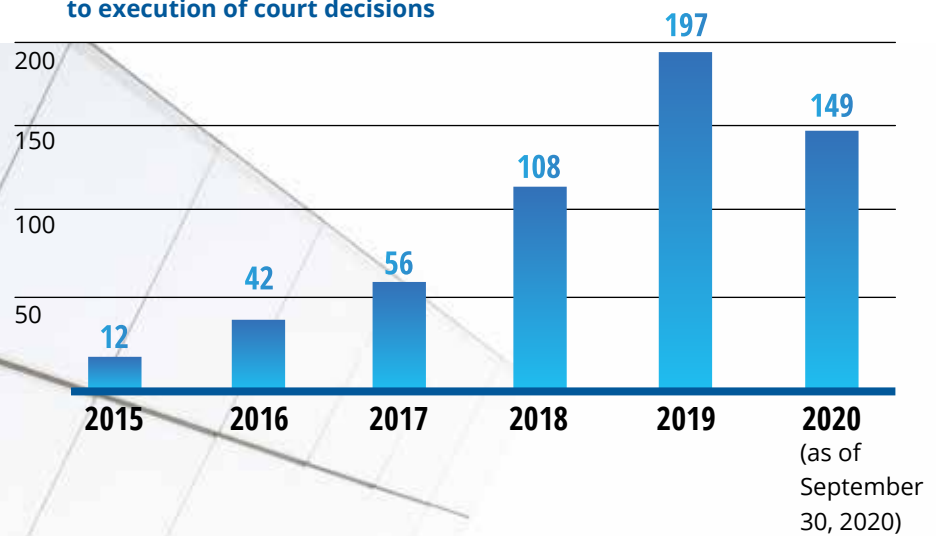
564

COMPLAINTS

related to voluntary or compulsory court decisions execution.

In practice, the number of such complaints is gradually increasing every year. Over the past five years this trend was evident:

Number of business complaints related to execution of court decisions



The BOC initiated cooperation with stakeholders to improve the enforcement situation, but previous efforts have not yielded significant systemic results, while some BOC ideas (proposals) have lost their relevance.

BUSINESS COMPLAINTS RELATED TO EXECUTION OF COURT DECISIONS (MAY 2015 — SEPTEMBER 2020)

	NUMBER OF COMPLAINTS RECEIVED
TAX ISSUES	425
Non-enforcement of court decisions on registration of tax invoices	222
VAT electronic administration	59
VAT refund	44
Inclusion in risky taxpayers' list	5
Cancellation/renewal/refusal of VAT payers registration	3
Tax other	92
PROSECUTOR'S OFFICE ACTIONS	37
Prosecutor's Office procedural abuse	18
Prosecutor's Office inaction	11
Prosecutor's Office criminal case initiated	7
Prosecutor's Office other	1
NATIONAL POLICE ACTIONS	34
National Police procedural abuse	24
National Police inaction	8
National Police criminal case initiated	1
National Police other	1
CRIMINAL PROCEEDINGS INITIATED BY THE TAX POLICE	18
STATE SECURITY SERVICE OF UKRAINE ACTIONS	13
State Security Service procedural abuse	8
State Security Service criminal case initiated	3
State Security Service other	2
CUSTOMS ISSUES	23
Customs duties refund	9
Customs valuation	6
Customs clearance (delay/refusal)	3
Customs other	5

	NUMBER OF COMPLAINTS RECEIVED
ACTIONS OF STATE REGULATORS	5
PERMITS AND LICENSES	2
Permits and licenses — construction	1
Permits and licenses — environmental management	1
MINISTRY OF JUSTICE: ACTIONS OF THE ENFORCEMENT SERVICE	2
ACTIONS OF LOCAL GOVERNMENT AUTHORITIES — RULES AND PERMITS	2
OTHER	3

As can be seen from the array of the complaints received, the majority (425) of them deal with non-execution of court decisions, which came into force, were from the tax sphere. Half of them (52%) related to non-execution of court decisions on tax invoices suspension, 14% — VAT electronic administration and 10% — VAT refund.

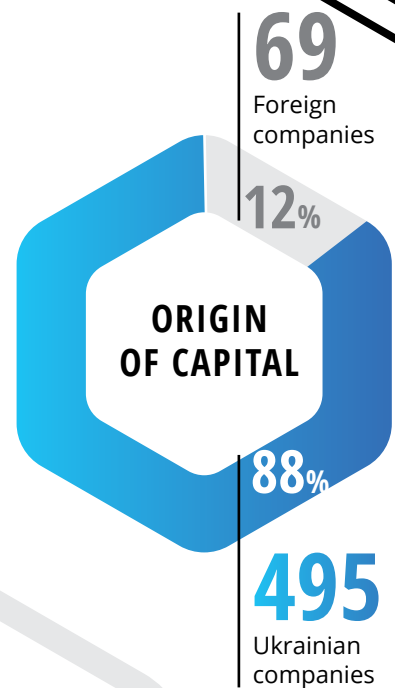
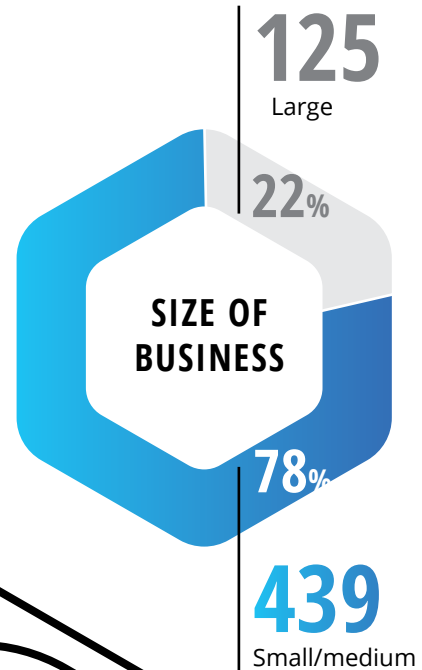
The second large group of issues addressed to the BOC by entrepreneurs were procedural violations and delays of law enforcement agencies — a total of 102 complaints or 18% of all complaints about non-execution of court decisions. Inside this block, complaints breakdown is as follows: complaints regarding Prosecutor's Office authorities' actions (37), the National Police (34), Tax Police (18), the State Security Service of Ukraine (13).

The rest of complaints related to customs issues, permits and licenses, actions of state regulators, local government authorities and the State Enforcement Service itself.

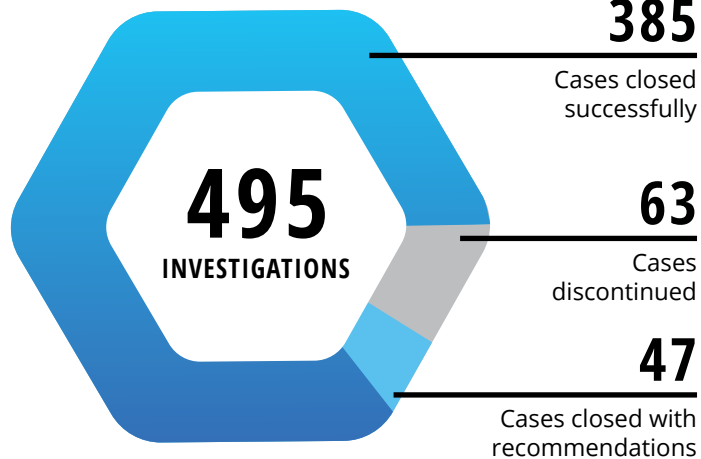
NON-EXECUTION OF COURT DECISIONS: COMPLAINANTS' PORTRAIT

TOP-6 INDUSTRIES WE RECEIVED COMPLAINTS FROM (MAY 2015 — SEPTEMBER 2020)

	Number of complaints received	Share of complaints received
ALL TYPES OF WHOLESALE	198	35%
MANUFACTURING	85	15%
REAL ESTATE AND CONSTRUCTION	53	9%
INDIVIDUAL ENTREPRENEURS	47	8%
RETAIL	37	7%
AGRIBUSINESS AND MINING	36	6%



FAILURE TO COMPLY WITH COURT DECISIONS: STATUS OF CLOSED CASES



Although

78%

of respective cases have been successfully resolved with the BOC's facilitation, this result is not always possible to achieve within a three-month investigation term prescribed by the BOC's Rules of Procedure. It is not uncommon for the BOC to manage to have a judgment executed in the course of normal communication with the relevant authority or a subordinate business entity and the Business Ombudsman must issue a separate decision recommending that the defendant take appropriate actions, while the BOC continues monitoring implementation of this recommendation. When comparing with investigation of other categories of cases, this, in turn, shows that the final execution of court decisions usually takes more time.

FINANCIAL EFFECT FOR BUSINESS FROM EXECUTION OF COURT DECISIONS IN CASES THAT HAVE COME INTO FORCE:

THE SUBJECT OF CLOSED CASES	FINANCIAL EFFECT, UAH
VAT refund	1,812,883,395
VAT electronic administration	344,390,878
Failure to comply with court decisions on tax invoices registration	94,606,683
Customs duties refund	7,058,934
Other customs' actions	4,310,451
Actions of the Prosecutor's Office — recovery of funds	1,468,615
Criminal proceedings initiated by the SFS	1,265,600
State Treasury Service — budget compensations	772,049
Violations in customs valuation	409,089
Actions of the National Police (procedural abuse) — recovery of funds	160,000
Other tax issues	110,403,234
TOTAL	2,377,728,928

In 385 cases out of 495 completed investigations, the BOC was able to convince authorities that the court decision, which had already entered into force, was binding. This allowed businesses to recover and save

UAH
2.4
bn

The BOC's experience shows that the problem with execution of court decisions is not limited to shortcomings of the enforcement mechanism — this sphere is much broader. In addition to those decisions in which the court directly obliged a defendant to take certain actions/decisions, when investigating complaints, the BOC often encounters situations in which the court finds actions or inaction of the authority illegal, with the respective reasoning, but does not oblige the latter to take any action instead. There are frequent cases of stubborn neglect of the well-established case law court conclusions by authorities, though in other identical disputes decisions were adopted in the favor of business. This, in the BOC's view, is also a systemic problem in the "business-state" relationship.

ISSUES TO BE HIGHLIGHTED IN A NEW SYSTEMIC REPORT

Given urgency of court decisions non-execution issue and its own long-term practice, the BOC has started preparing a new systemic report to bring forth relevant system recommendations to the Cabinet of Ministers of Ukraine, which, in particular, also recognized the problem by approving the National Strategy for Solving the Problem of Non-Enforcement of Court Decisions, the Debtors of Which Are a State Body or a State Enterprise, Institution, Organization, for the Period Up to 2022.

FIRSTLY

Thus, in the framework of the upcoming systemic report, which is expected to be published in early 2021, the BOC plans to cover general issues related to enforcement of court decisions:

Current statistics and complaints submitted to the BOC show that the State Enforcement Service has a relatively low operational capacity compared to private enforcers, whose institution was introduced in 2017. This experience has already proved being effective in a number of Eastern European countries (e.g. Bulgaria, Lithuania and Poland). At the same time, Croatia and Georgia are currently in the process of implementing such a mechanism.

According to the BOC's observations, private lenders (for example, banks, insurance companies) prefer working specifically with private enforcers given a greater customer focus and efficiency. However, there are certain legal restrictions faced by private enforcers and somewhat narrow applicable instruments compared to the state enforcers (e.g., private enforcers are not entitled to enforce court decisions in the public sector — against public authorities, government and subordinate companies, etc.).

The report will assess regulatory deficiencies in the current enforcement procedure relating to both state and private enforcers. In particular, according to preliminary estimates, the following areas of enforcement need improvement: automation of enforcement proceedings, workflow digitalization, debtors' assets tracking, blocking of accounts, liability for non-fulfillment of enforcers' requirements, seizure of movable and immovable property, etc.

Currently, there is a number of moratoria stipulating the possibility of non-enforcement of decisions of certain categories. Although some of these moratoria have been imposed temporarily, they remain in force. The BOC is going to assess the relevance of such restrictive measures and feasibility thereof in this context.

Another question is efficiency of the existing mechanism of judicial control and bringing officials to both disciplinary and criminal liability in connection with delays in execution of final judgments, or even refusal to comply therewith at all. The lack of the effective mechanism obviously allows authorities and subordinate enterprises to abuse and unreasonably postpone actual execution of court decisions.



SECONDLY

The BOC will focus more on specifics of execution of court decisions in those categories of cases directly faced by the institution:

As noted above, the vast majority of BOC cases are somehow related to the fiscal sphere.

According to the statistics, the BOC received 222 complaints related to tax invoices registration in the Unified Register of Tax Invoices based on final judgments. This issue is caused by VAT invoices suspension system introduced and launched in 2018, when the BOC faced massive suspension of tax invoices and significant delays in consideration of appeals by the State Fiscal Service. Although the procedure was gradually corrected and improved, taxpayers who received negative decisions from the State Fiscal Service at that time challenged them in court.

Currently, the BOC has to mainly handle the issue of delays in executing effective decisions by the State Tax Service, according to which the court ordered the authority to register a tax invoice which had been suspended earlier. As the actual implementation of relevant court decisions by a tax authority often goes beyond the reasonable time, the BOC is going to scrutinize possible ways of addressing this systemic issue.

In addition, complaints about implementation of decisions on VAT electronic administration, VAT refunds, taxpayers' accounting data, as well as administration of customs duties also indicate its systemic nature.

The BOC has extensive experience in cases involving non-compliance or delays in executing ruling of investigative judges within criminal proceedings at the stage of pre-trial investigation. The most common are cases of unreasonable seizure (arrest) of property, including amounts in the VAT electronic administration system. Business entities whose interests have been violated, have to challenge omission of law enforcement agencies to investigative judges.

Despite the binding nature of court decisions, the legislation does not provide any effective mechanism for implementation thereof. That is why the BOC often observes a situation when business cannot have a decision implemented in its favor. In particular, this problem is especially critical when law enforcement agencies do not return seized property for a long time, despite the obligation imposed by the investigative judge.

It is obvious that the quality of enforcement in commercial and investment disputes is one of the most explicit indicators of the state attractiveness for business in general. The BOC had an opportunity of conducting a number of investigations related to this aspect. As the practice shows, obstacles to actual implementation of foreign/international court decisions may be due to malpractice of the State Enforcement Service, as well as accompanied by pressure or, conversely, omission of law enforcement agencies conducting pre-trial investigation in criminal proceedings. This category of cases is also characterized by significant abuse of procedural rights and shortcomings of regulation for national court activities applied to evade or delay the actual enforcement.



1.9. FEEDBACK

In the reporting period
we received

94 FEEDBACK FORMS
FROM OUR
APPLICANTS

92
OF THEM
SAID THEY WERE
SATISFIED
WITH WORKING
WITH US.

which is

98%

COMPANIES ASSESSED OUR WORK BASED ON SEVERAL CRITERIA:

- client care and attention to the matter
- understanding the nature of the complaint
- quality of work product

They also indicated what they are satisfied
the most in dealing with us and specified
areas that require improvement.

WE PRESENT OUR COMPLIMENTS AND EXPRESS GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL'S TEAM FOR PROMPT, HIGH-QUALITY, PROFESSIONAL AND EFFICIENT WORK IN CONSIDERATION OF OUR COMPLAINT. THE SYSTEMATIC OPERATION OF THE BUSINESS OMBUDSMAN COUNCIL ALLOWED THE OIL PREMIUM TRADING HOUSE LLC TO RESTORE ITS LEGAL RIGHT TO OBTAIN A LICENSE AND FOCUS ON DOING BUSINESS AND FURTHER DEVELOPMENT OF THE ENTERPRISE WITHOUT A CONSIDERABLE WASTE OF TIME AND MONEY ON LITIGATION. WE BELIEVE THAT THE BUSINESS OMBUDSMAN COUNCIL ENSURES EFFECTIVE SYSTEMATIC COMMUNICATION OF BUSINESS WITH THE GOVERNMENT, STATE BODIES AND LOCAL GOVERNMENT AUTHORITIES, REPRESENTS AND PROTECTS BUSINESS INTERESTS IN STATE BODIES AND HELPS BUILD THE RULE OF LAW IN THE STATE.

YURI DUKA
DIRECTOR OF THE OIL PREMIUM TRADING HOUSE LLC

WE EXPRESS OUR GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ASSISTANCE IN RESOLVING THE ISSUE OF ENSURING OBSERVANCE OF OUR RIGHTS AND LEGITIMATE INTERESTS BY THE INTERDEPARTMENTAL COMMISSION ON INTERNATIONAL TRADE IN THE PROCESS OF CONDUCTING A SPECIAL INVESTIGATION ON IMPORTS INTO UKRAINE NOTWITHSTANDING THE COUNTRY OF ORIGIN AND EXPORT. THANKS TO YOUR TIMELY INTERFERENCE IN THE ABOVEMENTIONED SPECIAL INVESTIGATION, IT WAS POSSIBLE TO CHANGE THE PREVIOUS DECISION OF THE COMMISSION.

DMITRI IORGACHOV
DIRECTOR GENERAL OF THE PJSC
ODESAKABEL



WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL OF UKRAINE FOR ITS ASSISTANCE IN RESOLVING OUR ISSUE. DUE TO FACILITATION AND ASSISTANCE OF THE BUSINESS OMBUDSMAN COUNCIL, THE STATE TAX SERVICE OF UKRAINE ENFORCED THE COURT RULING TO THE FULL EXTENT. THE COMPANY SINCERELY THANKS THE BOC FOR ITS ASSISTANCE AND A FIRM AND PROFESSIONAL APPROACH IN RESOLVING THE DISPUTED ISSUE AND EXPRESSES ITS HOPE FOR FURTHER COOPERATION WITH THE BOC IN SETTLING PROBLEMATIC ISSUES.

VOLODYMYR GRYTSAI,
DIRECTOR GENERAL OF LUHANSK ENERGY
ASSOCIATION LLC

WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR ITS HIGH COMMITMENT TO THE IDEALS OF JUSTICE AND LEGITIMACY IN PROTECTING FOREIGN INVESTMENTS IN THE ECONOMY OF UKRAINE AND UKRAINIAN BUSINESS IN GENERAL. THANKS TO PROMPT AND PROFESSIONAL ASSISTANCE OF THE BOC IN RESOLVING OUR ISSUE, THE MINISTRY OF JUSTICE OF UKRAINE MADE CORRECT AND, MOST IMPORTANTLY, LEGAL CONCLUSIONS ABOUT THE SITUATION AND CANCELED ILLEGAL REGISTRATION ACTIONS, WHICH RESULTED IN THE ILLEGAL TAKEOVER OF OUR COMPANY. WE BELIEVE THAT THE BUSINESS OMBUDSMAN COUNCIL ACTIVITIES IN SETTLING OUR COMPLAINT ARE EXEMPLARY, TIMELY AND PROFESSIONAL, WHICH INSTILLS CONFIDENCE IN PROTECTION OF INTERNATIONAL INVESTMENTS IN THE ECONOMY OF UKRAINE.

TETIANA IAKOVENKO
REPRESENTATIVE OF IVCJ JAPAN LLC

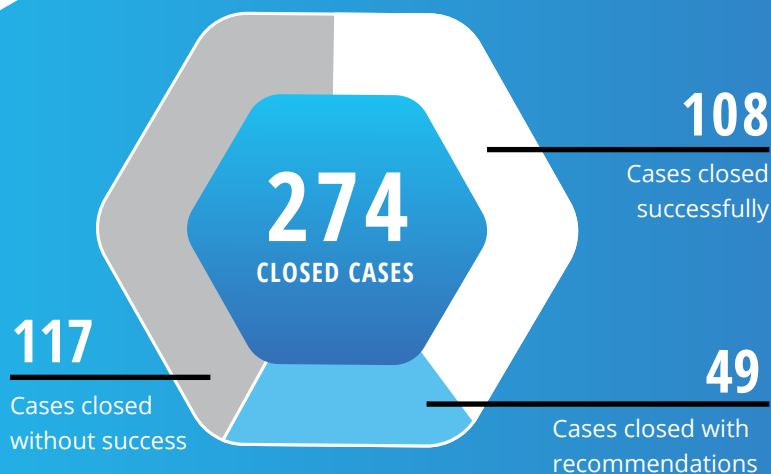
WE EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR PROMPT, HIGH-QUALITY, THOROUGH AND PROFESSIONAL ASSISTANCE IN CONSIDERING THE COMPLAINT AGAINST ACTIONS OF THE REGIONAL COMMISSION OF THE STATE TAX SERVICE OF UKRAINE ON THE RESULTS OF THE TAX INVOICE SUSPENSION. DUE TO YOUR HELP, WE WERE ABLE TO PROTECT OUR LEGAL RIGHTS IN THE PRE-TRIAL BODY AND FOCUS ON DOING BUSINESS INSTEAD OF WASTING TIME AND MONEY ON LITIGATION. WE ARE CONVINCED THAT THE BOC OPERATION IS AIMED AT COMBATING CORRUPTION IN UKRAINE, ENSURING TRANSPARENT BUSINESS ACTIVITY, AND ACTIVITIES OF THE BOC INVESTIGATORS INCREASE THE INVESTMENT ATTRACTIVENESS OF OUR STATE AND RAISE CONFIDENCE OF THE REAL SECTOR ENTERPRISES IN UKRAINE IN A WAY THAT THEIR INTERESTS IN STATE BODIES WOULD BE PROTECTED AND DEFENDED BY EXPERIENCED PROFESSIONALS.

ARTEM ROMANIUK
DIRECTOR GENERAL
CHIEF ACCOUNTANT P. HRUSHKOVSKYI



2. SUMMARY OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS

2.1. INFORMATION ON CLOSED CASES AND RECOMMENDATIONS PROVIDED



NUMBER OF CLOSED CASES BY QUARTERS

Q3 2020	274
Q2 2020	297
Q3 2019	287

TOTAL NUMBER OF CLOSED CASES SINCE LAUNCH OF OPERATIONS:

5203

TOP-10 SUBJECTS OF CLOSED CASES IN Q3 2020:

	Q3 2020	Q2 2020	Q3 2019
Tax issues	209	207	197
National Police actions	17	26	15
Actions of state regulators	9	10	21
Customs issues	8	12	13
Prosecutor's Office actions	8	1	14
Actions of local government authorities	6	15	7
Actions of state companies	6	2	5
Actions of the Ministry of Justice	4	6	7
Legislation drafts/amendments	4	1	
Other	2	11	5

Among all closed cases in Q3 2020, 209 or

76%

were tax-related — this is 6pp more as compared to the previous quarter.

Actions of the National Police and the Prosecutor's Office were in focus of

6%

and

3%

of closed appeals respectively.

3%

of all closed cases regarding actions of state regulators.



WE EXPRESS OUR APPRECIATION AND DEEP GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR THE PROFESSIONAL APPROACH AND PERSONAL CONCERN ABOUT ACTIONS AIMED AT EXCLUDING OUR COMPANY FROM THE RISKY TAXPAYERS' LIST. THE RECOMMENDATIONS OF THE BOC INVESTIGATOR ALLOWED US TO RESUME BUSINESS ACTIVITY AND PRODUCTION, RETAIN STAFF, AND RESUME THE INVESTMENT PROGRAM AS SOON AS POSSIBLE.

IHOR ZASEDKO

DIRECTOR OF THE DESIGN BUREAU OF PIPE FITTINGS AND SPECIAL WORKS LLC

FINANCIAL IMPACT IN Q3 2020:

UAH **299** MN

	Q3 2020, UAH	GRAND TOTAL 2015-2020, UAH
Tax VAT electronic administration	211,591,128	418,774,133
Tax inspections	61,022,625	7,421,171,702
Tax other	19,242,527	989,044,798
Tax VAT invoice suspension	6,419,605	329,836,156
State companies other	975,466	9,238,954
TOTAL	299,251,350	18,505,771,761

The major share of financial impact — 70% or UAH 212 mn in the reporting quarter came from solving issues with VAT electronic administration. We also helped entrepreneurs to appeal ungrounded results of tax inspections for them to save UAH 61 mn. The financial impact from fixing problems with registration of tax invoices was over UAH 6 mn. Solving other tax issues also helped business to recover UAH 19 mn. Successful finalization of a dispute involving a state-owned company resulted in a gain of UAH 975k for the complainant.

**TOTAL FINANCIAL IMPACT
OF BOC'S OPERATIONS
MAY 20, 2015 —
SEPTEMBER 30, 2020 EXCEEDS**

**UAH
18,5^{BN}**

**NON-FINANCIAL
IMPACT OF BOC'S OPERATIONS
IN Q3 2020:**

	Q3 2020	Q2 2020	Q3 2019	TOTAL
Malpractice ceased by Complainee	41	45	62	667
Tax records reconciled, tax reporting accepted	9	3	3	187
Legislation amended/enacted; procedure improved	4	3	1	77
Permit/license/conclusion/registration obtained	3	4	3	107
Criminal case against the Complainant closed; property/ accounts released from under arrest	2	4	9	132
Criminal case initiated against state official/3rd party	1	2	4	25
State official fired/penalized	1	1	0	36
Claims and penalties against the Complainant revoked Sanction lifted	0	1	1	25
Contract with state body signed/executed	0	1	2	52
Other issues	39	30	18	500

In Q3 2020, we ceased dozens of episodes of state bodies malpractice, helped companies to submit tax reports, improve state procedures, obtain licenses and permits and close ungrounded criminal cases.

RECOMMENDATIONS PROVIDED

Total number of
recommendations
issued since launch of
operations:

3419

Recommendations
issued in Q3, 2020:

144

Number of recommendations not
implemented: **199**

Number of recommendations
subject to monitoring: **183**

89% **5%** **6%**

Number of
recommendations
implemented: **3037**

GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2020 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

			Cumulative implementation rate since May 2015 to a respective period		
	Issued recommendations	Implemented recommendation	Q3 2020	Q2 2020	Q3 2019
State Tax Service, State Customs Service, State Fiscal Service	2237	2162	92%	93%	93%
National Police of Ukraine	195	144	74%	77%	81%
Prosecutor's Office of Ukraine	146	116	79%	80%	79%
Local government authorities	135	135	70%	70%	74%
Ministry of Justice of Ukraine	112	105	94%	93%	93%
Ministry for Development of Economy, Trade and Agriculture of Ukraine	102	102	86%	86%	82%
State Security Service	55	54	98%	98%	98%
Ministry of Ecology and Natural Resources of Ukraine	47	41	87%	93%	96%
The Verkhovna Rada, the Cabinet of Ministers, the President of Ukraine	38	31	82%	88%	90%
State Enterprises	32	29	91%	85%	86%
Ministry of Social Policy and Labor of Ukraine	32	28	88%	87%	92%
Ministry for Communities and Territories Development of Ukraine	29	28	97%	100%	98%
Ministry of Finance of Ukraine	22	17	77%	77%	90%
Ministry of Infrastructure of Ukraine	16	14	88%	67%	71%
Ministry of Health of Ukraine	20	14	70%	93%	92%
Ministry of Internal Affairs	15	11	73%	79%	81%
National Commission for State Regulation of Energy and Public Utilities	13	11	85%	91%	91%
Antimonopoly Committee of Ukraine	12	9	75%	70%	70%
NABU	8	7	88%	71%	100%
State Funds	8	5	63%	40%	40%
National Bank of Ukraine	6	2	33%	40%	40%
National Council of Ukraine on Television and Radio Broadcasting	2	2	100%	100%	100%

			Cumulative implementation rate since May 2015 to a respective period		
	Issued recommendations	Implemented recommendation	Q3 2020	Q2 2020	Q3 2019
State Emergency Service of Ukraine	2	2	100%	100%	100%
State Border Guard Service of Ukraine	1	1	100%	100%	0%
National Bureau of Investigation of Ukraine	1	1	100%	100%	0%
Ministry of Education and Science of Ukraine	1	1	100%	100%	100%
Ministry of Defense	2	1	50%	0%	0%
Communal services	1	1	100%	100%	100%
Other	11	10	91%	90%	91%

As of the Q3 2020, state bodies implemented 89% of individual recommendations of the BOC.

More than two thirds (69%) of individual recommendations were addressed to the block of the State Tax Service, the State Customs Service and the State Fiscal Service (ex-SFS) – they fulfilled 92% of the Council's recommendations.

In the reporting quarter, the following state bodies who we issued 30+ recommendations improved their implementation performance: the Ministry of Justice (1 pp), the Ministry of Social Policy (1 pp) and state enterprises (6 pp).

At the same time, the lowest implementation ratio is recorded for the National Police (-3 pp), the Prosecutor's Office (-1 pp), the Ministry of Ecology and Natural Resources (-6 pp), the Verkhovna Rada, Cabinet of Ministers and the President of Ukraine (- 6 pp), the Ministry for Communities and Territories Development (-3 pp) and the Ministry of Social Policy (-1 pp).

The ratio of the Security Service of Ukraine remained consistently high at 98%.

2.2. SYSTEMIC ISSUES IDENTIFIED AND SOLVED



Systemic Report October 2015

PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

Issue

Increasing transparency in export-import operations with scrap metal

BOC's recommendation

- (1) Develop amendments to the Law of Ukraine "On Scrap Metal" on the regulation of exports and imports to modernize the legislation and improve economic and legal provisions related to operations with scrap metal
- (2) To study the requirements for classification of scrap metal, such as the Green List of waste materials for procedure simplification according to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Actions taken by government agencies

Implemented

The Law on Amendments to Certain Legislative Acts (Concerning the De-Shading of the Market of Metallurgical Raw Materials and Operations with Scrap Metal) 776-IX was adopted on July 14, 2020

Entry into force will take place on 14.11.2020

The law implements recommendations of the BOC concerning modernization of the legislation and improves economic and legal provisions related to operations with scrap metal (including export-import operations).

Significant progress

On June 4, 2020, the Verkhovna Rada of Ukraine registered the draft Law of Ukraine N2207-1-d "On Waste Management", which will regulate cross boundary transfer of hazardous waste

Adopted by the Verkhovna Rada on 21.07.2020 in the first reading.



Systemic Report

July 2016

REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

Issue

To ensure that the law on establishing harmonized conditions for placing building materials on the market is substantially modernized and brought in line with EU legislation and in compliance with Ukraine's obligations under the Association Agreement with the EU

Actions taken by government agencies

Implemented

The Law of Ukraine "On Providing Construction Products on the Market" was adopted by the Verhovna Rada on 02.09.2020 and signed by the President of Ukraine

BOC's recommendation

Draft a legal act approving the technical regulation of building materials in full compliance with EU Regulation #305/2011 passed by the European Parliament and Council on March 9, 2011 to establish harmonized conditions for placing building materials on the market and repealing the Council's Directive #89/106/EEC, in compliance with Ukraine's commitments under the Association Agreement

2.3. SUMMARY OF IMPORTANT INVESTIGATIONS

In this chapter you may get familiar with the cases successfully settled by the Business Ombudsman Council.

Subject: Tax other

Error in STS information database — enterprise not a debtor any more

Complainee:

Main Department of the State Tax Service in Dnipropetrovsk region (MD STS)

COMPLAINT IN BRIEF:

The enterprise from Dnipropetrovsk region appealed to the Council. The company complained about the incorrect information indicated in information databases of the STS: the enterprise had allegedly run into UAH 1 mn of a tax debt imposed as a result of the tax inspection. The complainant appealed against the decision of the STS in court. Although the law forbids reflecting additional tax charges as reconciled while the additional charges are challenged in court, the information about the tax debt remained in the STS's database. Considering the decision of the tax authority on imposing additional payments illegal, the enterprise decided to appeal to the Council.

ACTIONS TAKEN:

The investigator of the Council examined the case file and acknowledged the complaint was substantiated. The Council recommended the STS to ensure correct indication of the information regarding the complainant's tax debt in the STS's database.

RESULT ACHIEVED:

Having upheld the Council's recommendations, the STS satisfied the complaint of the enterprise. The STS agreed that the taxpayer's integrated card indicated non-reconciled tax liabilities of the complainant, but as of now the error had been corrected — the information about the company was displayed correctly. The case was successfully closed.

Subject: Tax criminal cases

No more pressure of law enforcement officials on natural products producer

Complainee:

State Tax Service (STS),
Investigations Department
of Financial Investigations of
the Main Department of the
State Fiscal Service (MD FI)

COMPLAINT IN BRIEF:

The Council received a complaint from a natural products producer from Kharkiv region which complained about the pressure on the part of law enforcement officials. The enterprise appeared in the pre-trial investigation of circumstances of other company's bankruptcy due to takeover of the property by its employees. As a result, the part of assets and the staff of the company transferred to the complainant — at this point turbulent times began for the enterprise: numerous interrogations of employees, requests for existing and non-existing business and financial documentation. The investigation lasted for three years, but law enforcement officials did not take the final decision in the case. Furthermore, the investigation authority incidentally changed the classification of the criminal offence. The natural products producer

Subject: Tax other**Cost of technical mistake in tax reporting****Complainee:**

State Tax Service Service (STS), Main Department of the State Tax Service in Kyiv city (MD STS)

itself appealed to all possible authorities and demanded to stop groundless pressure on its activity, but unsuccessfully. At this stage, the Council commenced the investigation.

ACTIONS TAKEN:

The investigator examined the case file and acknowledged the complaint was substantiated. The Council asked the STS and the MD FI to finally take a decision in the criminal proceeding. So, law enforcement officials intensified the investigation.

RESULT ACHIEVED:

The investigation authority decided to close the criminal proceeding in the case that touched upon the fate of our complainant. The natural products producer thanked the Council for help. The case was closed.

COMPLAINT IN BRIEF:

The Council received four similar complaints from the group of agricultural enterprises. The MD STS did not recognize their tax declarations as being duly completed and, therefore, excluded all four companies from the Registry of 4th Group Single Taxpayers. Choosing such a status is a widespread practice for both national and international agriculture producers: it significantly facilitates the accounting process and reporting submission. Hence, deprived of the status of a single taxpayer, the enterprises were obliged to switch to the general taxation system.

The MD STS did not recognize tax declarations of complainants only due to a technical mistake in the title of the addressee, that was "STI in Shevchenkivskyi District of the SFS MA in Kyiv city" instead of the correct one "STS". At the same time, the rest of the information in tax declarations was correct. It should be noted that the aforementioned mistake affects neither relevant budget calculations nor administration of the single tax. The declaration of one of the companies was processed by the STS server after midnight the next day, so it was rejected due to late submission.

Nevertheless, the MD STS did not confirm the status of a single taxpayer in 2020 for all four companies.

The Council immediately started consideration of complaints. Later, the Council also discovered that under similar circumstances the MD STS did not recognize declarations of approximately 50 other taxpayers.

ACTIONS TAKEN:

Due to the quarantine, the investigators of the Council had to consider all four complaints via teleconference, that did not prevent the complainants and the Council from presenting their position to the STS.

Subject: Tax inspections

Right for VAT refund reserved: leading grain exporter recovered UAH 11 mn

Complainee:

Main Department of the State Tax Service in Kyiv City (MD STS)

The Council recommended the STS to ensure a full, comprehensive and impartial consideration of complainants' cases. In particular, having referred to the relevant case-law of the Supreme Court, the Council's investigators stressed the need for the tax authority to comply with the principle of good administration and proportionality. According to it, the STS has to take into account all the circumstances in order to make a consistent and objective decision in the case.

RESULT ACHIEVED:

The STS largely upheld recommendations of the Council. The tax authority restored the status of a single taxpayer, though recognizing declarations for only three complainants. Unfortunately, the STS did not satisfy the complaint of one of the companies since its declaration was received by the STS server after the deadline.

COMPLAINT IN BRIEF:

An agricultural company and a grain exporter to more than 30 countries appealed to the Council. The enterprise complained that in the course of the tax audit, the MD STS refused to provide VAT budget refund in the amount of UAH 11 mn. Such a decision was grounded on the fact that the enterprise had allegedly violated the Tax Code: for technical reasons the complainant did not indicate the amount of the VAT when he was preparing payment for counterparties. Nevertheless, in the additional letter to suppliers the enterprise clarified the VAT amount to be paid. The complainant asked the MD STS to reconsider the results of the tax audit. At this stage, the Business Ombudsman Council started investigation of the complaint.

ACTIONS TAKEN:

The Council acknowledged the complaint was substantiated and recommended the MD STS to fully, comprehensively and impartially consider the complainant's objections regarding tax audit conclusions. The investigator highlighted that the current legislation does not specify the need to indicate a separate amount of VAT in the "payment purpose" details of payment orders. In particular, the fact that the complainant separately confirmed inclusion of the VAT amount in the payment to counterparties was fully justified, corresponds to the norms of the current legislation and is confirmed by explanations of the National Bank of Ukraine and the case-law.

RESULT ACHIEVED:

The MD STS implemented the Council's recommendations. As a result, the tax authority reconsidered the audit conclusions, and the complainant received the VAT refund in the amount of UAH 11 mn. The case was successfully closed.

Subject: Tax inspections**Over UAH 1 mn of additional payments for international packaging and protection equipment producer cancelled****Complainee:**

State Tax Service (STS), Main Department of the State Tax Service in Zakarpattia region (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a packaging and protection equipment producer. The company has 25 manufacturing facilities in European countries. It started to operate in the Ukrainian market in 2017. The enterprise complained about the results of the tax audit due to alleged violation of tax legislation and disproportionate payments made from the unified social contribution (USC). It should be noted that the complainant imported spare parts after renovation under agreement with the non-resident company: the enterprise received maintenance and consultancy services from the foreign partner on a regular basis.

However, during the inspection the tax authority came to the conclusion that the company underestimated its income for the last two years and did not pay the cost of services provided to the non-resident. In particular, the STS imposed sanctions and additional payments (including the USC) on the complainant worth over UAH 2 mn. Disagreeing with the tax authority's decision, the enterprise appealed to the STS. In parallel, the Business Ombudsman Council started consideration of the complaint.

ACTIONS TAKEN:

The investigator of the Council acknowledged the complaint was substantiated and upheld the complainant's position. The Council ascertained that the complainant accrued and paid the USC simultaneously with payment of salaries to the personnel. For unknown reasons, although processed by the bank, the amount of payments was not displayed in the e-office of the taxpayer that led to USC arrears. Apart from that, the Council found out that the supervisory authority did not examine the circumstances and all the primary documents in the case to the full extent. The Council recommended the STS to ensure a full, comprehensive and impartial consideration of the complainant's case.

RESULT ACHIEVED:

The STS satisfied the complaint of the enterprise, though partially: additional payments worth over UAH 1 mn. were cancelled. Unfortunately, the supervisory authority left the decision regarding the USC unchanged. The case was closed.

Subject: Non-enforcement of court decisions on VAT registration

**VAT invoices of
agricultural enterprise
registered**

Complainee:
State Tax Service (STS)

COMPLAINT IN BRIEF:

The Council received a complaint from an agricultural enterprise from Kirovograd region due to arrest of the company's VAT limit in the system of electronic administration of VAT (SEA VAT). The agricultural enterprise appealed to the court that had taken a decision in favor of the complainant and obliged the tax service to lift the arrest and enable the company to dispose of the registration limit. However, the tax authority did not rush to enforce the court's decision that entered into force. Trying to recover the right to register VAT invoices the enterprise appealed to the STS. After the state body continuously delayed, the enterprise decided to gain support from the Business Ombudsman Council.

ACTIONS TAKEN:

It should be noted that recently entrepreneurs have often turned to the Council with appeals of non-enforcement of court decisions on the relevant issues (registration of VAT invoices, arrests of limits in SEA VAT, etc.) The issue has become systemic long ago and requires compliance with the current legislation in the part of obligatory enforcement of court decisions that entered into force. In view of it, the Council recommended the STS to immediately unblock the amounts of VAT limits of the agricultural enterprise in the e-office of SEA VAT and enforce the court decision.

RESULT ACHIEVED:

The Council ensured an effective dialogue with the controlling authority. After the Council intervened, the STS unblocked the registration limits of the company in the SEA VAT. The complainant finally managed to register tax invoices. The representative of the complainant's company contacted the Council's team that investigated the complaint and thanked for their timely help: "During the last two months, the agricultural company appealed to different state bodies in order to settle the present issue, however we only received a response from the Business Ombudsman Council's team". The case was successfully closed.

Subject: Tax termination/renewal/refusal of VAT taxpayers registration

Quarantine not a reason to reject registration of enterprise in Ukraine for Polish investor

Complainee:

Main Department of State Tax Service in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a Polish investor who faced a problem of being registered as a taxpayer. The entrepreneur had to obtain a tax ID to register a company in Ukraine. However, the tax office replied that registration was not provided during quarantine apart from cases when there was a threat to life or health. That meant that the service was provided, but on a selective principle, which created corruption factors with respect to the state body operations and did not contribute to attracting foreign investment at all. Then the entrepreneur appealed to the Council for help.

ACTIONS TAKEN:

Having examined the case file, the investigator acknowledged the complaint was substantiated. After the Polish investor repeatedly appealed to the MD STS and submitted all the necessary documents, the MD STS easily registered the Polish investor in Ukraine.

RESULT ACHIEVED:

As long as the complainant received a registration card number in the Register of Individuals-Taxpayers, the Council closed the case.

Subject: Inclusion in lists of risky taxpayers

No-risk espresso: coffee retailer is no more a VAT risky taxpayer

Complainee:

Main Department of STS in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a coffee retailer from Kyiv. The company complained that it was included in the VAT risky taxpayers' list. The experience of the Business Ombudsman Council shows that the tax authority often does not give proper explanation on the real reasons why the enterprise is recognized as a risky taxpayer. Nevertheless, in the case of the complainant, the MD STS clearly defined key reasons for the decision taken.

Hence, the tax authority ascertained that while trading in coffee, the company carried a markup on roasted coffee beans and sold a greater quantity of coffee than it had purchased. According to the position of the MD STS, it became possible due to formation of a significant amount of the VAT tax credit by the complainant as a result of importing fixed assets, i.e. motor vehicles and seating furniture. It should be noted that as per the Tax Code of Ukraine, when goods are imported to the customs territory of Ukraine, the enterprise gets the right to the VAT tax credit after completing a relevant customs declaration that confirms the fact of VAT payment to the budget. However, the MD STS was concerned that by importing vehicles and office chairs, the enterprise formed the VAT tax credit and accordingly minimised the amount of the VAT to be monthly paid to the budget when selling coffee.

In order to refute the decision on compliance with the taxpayers' risk criteria, the Complainant appealed to the MD STS on his own, appealed to the MD STS and provided the regional Commission with additional documents and explanations, though it did not help to settle the issue. Then the company appealed to the Council for help.

ACTIONS TAKEN:

The investigator initiated immediate consideration of the complainant's case. The Council supported the company's position and asked the MD STS to objectively, comprehensively and thoroughly consider the information and documents that could speak for non-compliance of the enterprise with the taxpayers' risk criteria. Later the STS suggested that the complainant should submit the documents necessary for repeated consideration of the company's arguments by the regional Commission.

RESULT ACHIEVED:

Due to effective communication of the Council with controlling authorities and active interaction on the part of the complainant, the MD STS excluded the enterprise from the risky taxpayers' list. The case was closed one and a half month after the investigation began.

Subject: Tax other

Incorrect single tax accruals: tax officials reprimanded

Complainee:

Main Department of the STS in Dnipropetrovsk region (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a private entrepreneur from Kryvyi Rih who was excluded from the Register of Single Taxpayers. The complainant learned about the decision of the tax authority accidentally, when it did not accept her yearly tax reporting. According to the private entrepreneur, for unknown reasons she did not receive any letters on her exclusion from the Register of Single Taxpayers. Thus, the complainant decided to appeal to the MD STS via e-cabinet: she asked to restore the status of the single taxpayer in the Register having attached the documents proving her payments to the budget. However, the complainant did not receive any response from the tax authority. Then the Business Ombudsman Council started consideration of the complaint.

ACTIONS TAKEN:

Having examined the case materials, the Council's team ascertained that the tax authority had excluded the complainant from the Register of Single Taxpayers without conducting a relevant inspection as required by the Tax Code of Ukraine. Therefore, neither the Council, nor the complainant understood true grounds for such a decision. Hence, primarily the Council asked the STS and the MD STS to explain why the complainant had been excluded from the Register of Single Taxpayers. Later it turned out that during two consequent

quarters — from January till June 2019 — the tax authority accrued a debt to the entrepreneur. It arose due to non-payment of the fine for the incomplete and late payments of the single tax from February 2017 to June 2018.

Taking into account that the complainant learned about the tax decisions too late, she was denied consideration of an administrative appeal by the STS since a 10-day deadline had expired.

Alongside, the Council continued consideration of the complaint. The investigators team of the Council found out that in 2017, Kryvyi Rih City Council reduced the rate of the single tax for private entrepreneurs of the Group II to 17%, which came into force in April 2017. Therefore, the Council asked the MD STS to provide detailed information on the entrepreneur's settlements with the budget for 2017-2020 and recommended to adjust the accrued single tax amounts in the complainant's integrated card (where the outdated rate of 20% was applied instead of the newly adopted 17% one). The Council organized a teleconference discussion of the complaint with the participation of the STS administration.

RESULT ACHIEVED:

While processing the complaint, tax authorities provided all the information requested by the Council (including scan copies of envelopes that confirmed the fact that the decisions which subsequently led to accrual of the tax debt and exclusion of the complainant from the Register of Single Taxpayers, had been duly sent to the latter).

After the Council intervened, the MD STS made adjustments to the accrued amounts of the tax liability from the single tax in the complainant's integrated card, having adjusted them to 17% rate. The STS also informed the Council that the MD STS official was brought to responsibility for improper performance of functional duties. The case was closed due to exhaustion of available means of administrative appeal. The complainant appealed to court seeking cancellation of the decision to exclude her from the Registry of Single Taxpayers.

Subject: Tax criminal cases

The Council helped mushroom producer return computer equipment seized by tax police

Complainee:

Main Department of State Fiscal Service in Odesa region (MD SFS)

COMPLAINT IN BRIEF:

One of the largest producers of mushrooms of the southern region of Ukraine approached the Council. Under pre-trial investigation, during the search, the tax police seized a significant number of the company's documents, money, computers and other equipment. The investigating judge, who received an appeal of the company's lawyer, agreed that the actions of the tax police were illegal and obliged the latter to return the seized property. However, his decision was implemented only partially. Although the enterprise managed to return the documents and money, the fate of the equipment (including servers) remained unknown. The enterprise sought help from the Business Ombudsman Council.

ACTIONS TAKEN:

Having acknowledged that actions of the state body were illegal, the Council responded to the company's complaint as quickly as possible.

On the second day after the complaint was received, the Council approached the MD SFS and asked to immediately implement the ruling of the investigating judge and return the property to the business entity. The Council sent a copy of the letter to a higher-level body — the SFS of Ukraine — to be considered in the framework of the Memorandum of Partnership and Cooperation.

RESULT ACHIEVED:

In less than 2 weeks after the Business Ombudsman approached the state authority, the MD SFS fully returned the equipment to the Complainant. The tax police officials explained that the return of the equipment was delayed as it was in the process of expert examination in the respective special institution. The Complainant confirmed to the Council that the issue had been resolved and thanked for the support. The case was successfully closed.

Subject: VAT invoice suspension

Tax invoices of agricultural enterprise of Kharkiv region unblocked

Complainee:

STS, Main Department of STS in Kharkiv region (Kharkiv STS)

COMPLAINT IN BRIEF:

The Council received a complaint from an agricultural enterprise from Kharkiv region. The company complained about suspension of registration of four tax invoices. According to the decision of the tax authority, it rejected registration of the invoices due to absence of certain documents. In order to confirm the reality of transactions, the complainant submitted packages of necessary documents to the tax authority and additionally solicited the Council's support.

Subject: Tax inspections

UAH 1 mn of additional payments for car showroom of the capital rescinded

Complainee:

State Tax Service of Ukraine (STS Ukraine), Main Department of STS in Kyiv City (MD STS)

ACTIONS TAKEN:

Having examined the case file, the investigator concluded that the complaint was substantiated. The Council recommended the STS to satisfy the company's complaint and cancel the illegal decision that violated legal interests of the complainant.

RESULT ACHIEVED:

Having upheld the Council's recommendations, the tax authority registered tax invoices of the agricultural enterprise. The complainant thanked the investigators team for the effective work: "We express our gratitude to you and your team for a huge help in settling the issue on behalf of our director and the whole team. Now we will be able to receive money from the buyer in the amount of VAT on the sale that our company vitally needs for starting the autumn fieldwork". The case was successfully closed.

COMPLAINT IN BRIEF:

The Council received a complaint from Kyiv car showroom. The company did not agree with the results of the tax inspection, as a consequence of which additional payments were imposed. According to the decision of the MD STS, given the clarifying calculation to the tax return for 2017, the complainant paid UAH 1 mn less in taxes.

In 2016, Kyiv City Council reduced the land tax. In particular, the government approved the new valuation procedure of the land tax in Kyiv that came into force in 2017. The tax amount for the land plots rented by the complainant respectively decreased. As long as the company made a mistake in the tax return for rent in 2017, it submitted an additional document with a correct calculation.

Nevertheless, in the course of the inspection, the MD STS disagreed with the fact that in 2017 and 2018 the car showroom had to pay smaller amounts than a year earlier. However, in accordance with the extracts from the technical documentation that the complainant received in August 2018, the tax amount in fact decreased compared to 2016. Therefore, the tax authority obliged the enterprise to return unpaid UAH 700k to the budget and additionally imposed over UAH 300k of sanctions. The car showroom solicited help from the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined complaint materials, the investigator of the Council upheld the position of the enterprise. In the letter to the STS, the Council asked to ensure a full, comprehensive and impartial consideration of the company's complaint.

The investigator had ascertained that the change of the normative monetary valuation of land plots in Kyiv entered into force by the decision of local authorities and not since the receipt of the extract from technical documentation by the complainant.

RESULT ACHIEVED:

The STS of Ukraine upheld the Council's recommendations and dropped additional payments for the enterprise. The investigator successfully closed the case.

Subject: Non-enforcement of court decisions on VAT registration

**Court decision enforced:
registration limit of
Luhansk energy company
increased by UAH 212 mn**

Complainee:

State Tax Service of Ukraine
(STS)

COMPLAINT IN BRIEF:

The Council received a complaint from an energy enterprise from Luhansk. The company complained about the fact that the STS did not enforce the court decision that had entered into force. It turned out that the tax authority did not automatically increase the company's registration limit in the amount of over UAH 200 mn in accordance with the submitted tax declaration for June 2015. The STS argued that such an increase was made by controlling authorities only once until July 31, 2015 while the complainant submitted the VAT declaration for June 2015 only in September 2016. It should be noted that due to carrying out business on the territory of the ATO, the complainant was able to submit the declaration for June 2015 only in August 2016. This fact was confirmed by the respective certificate of the Ukrainian Chamber of Commerce and Industry.

Back in 2018, the enterprise asked the STS to voluntarily enforce the court decision, however the controlling authority did not give any response to the complainant. Even when the decision was sent to the Department of Compulsory Enforcement of Decisions of the State Enforcement Service Department of the Ministry of Justice, the tax service avoided complying with the decision. In this regard, the energy company also appealed to the police, but tax authorities had not enforced the court decision in the complainant's case for two years already. At this stage, the case consideration was commenced by the Business Ombudsman Council.

ACTIONS TAKEN:

The investigator of the Council acknowledged the complaint was substantiated. The Council recommended the STS to ensure enforcement of the court decision in the complainant's case and increase the tax amount for which the energy company is entitled to register its tax invoices. Under the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the STS, the Council brought up the complaint for consideration at the expert group meeting with the participation of the STS administration.

Subject: VAT invoice suspension

**"First aid" to meat
supplier: tax invoice
unblocked**

Complainee:

State Tax Service (STS), Main
Department of STS in Kyiv
City (MD STS)

RESULT ACHIEVED:

Having upheld the Council's recommendations, the tax authority finally enforced the court decision. The STS increased the company's registration limit for the amount of over UAH 212 mn.

"We sincerely thank the Business Ombudsman Council for the assistance provided and a consistent and professional approach in resolving the disputed issue. We hope for further cooperation in settling problematic issues that may arise in the company's business activity in the future", thanked the complainant. The case was successfully closed.

COMPLAINT IN BRIEF:

The Council received a complaint from a meat products retailer from Kyiv. The enterprise complained about suspension of registration of a tax invoice. According to the decision of the MD STS, the company did not provide documents copies necessary to confirm the reality of transactions. The complainant tried to settle the situation on its own, having additionally submitted all required documents and explanations to the tax authority. However, the controlling body rejected registration of the tax invoice. The company turned to the Business Ombudsman Council (BOC) for help.

ACTIONS TAKEN:

Since complaints related to suspension of tax invoices registration require prompt response due to the need to appeal against the tax decision within the first seven days, the investigators team initiated immediate consideration of the complaint.

The Council acknowledged the complaint of the meat supplier was substantiated and recommended the STS to ensure a proper consideration of the complaint, take into account the arguments of the complainant and the Council and satisfy the company's complaint.

RESULT ACHIEVED:

The STS upheld recommendations of the Council and cancelled the illegal decision on suspension of the tax invoice registration. The enterprise thanked the Council for help: "We express our sincere gratitude to the BOC for the prompt, quality, thorough and professional work in consideration of our complaint. Thanks to your help we managed to assert our legitimate rights in the pre-trial body and focus on doing business rather than wasting time and money on litigation". The case was successfully closed.

Subject: Tax other

With the Council's support, a company receives acceptable explanation from the tax authority on the use of cash registers (RRO)

Complainee:

Main Department of the STS in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from a company from Kyiv which specializes in online sales of air tickets and related services (reservation of seats in the cabin, booking services in VIP halls of airports, etc.). The enterprise provides services and receives payment for them only remotely (via the Internet), without any direct contact with customers. The company got concerned about tax authorities' actions regarding a very broad interpretation of the legislation on the use of cash registers (Ukrainian abbreviation — RRO).

Although the RRO is essentially designed to handle cash, Ukrainian tax authorities often require their use in any other forms of payment, apart from classic (traditional) transfer to the seller's current bank account from the buyer's current bank account or through the bank's cash desk. For instance, there is a controversial position concerning the need to use the RRO when making payments through payment terminals.

The attitude of tax authorities to making payments through online payment systems (LIQPAY, PORTMONE, etc.) is also ambiguous.

In order to avoid risks in the future, the company asked the MD STS to clarify that it did not need to use the RRO when conducting its activities. However, the explanation received by the company left more questions than answers. Moreover, when reading it, there was a general impression that the tax authority still expected the company to use the RRO. Strongly disagreeing with this approach, the company lodged a complaint about the MD STS actions to the Council.

ACTIONS TAKEN:

Having examined complaint materials, the investigator of the Council came to the conclusion that the enterprise's concern with regard to the MD STS actions was truly substantiated. The received explanation was not clear enough and left room for interpretation. At the same time, from the Council's point of view, the tax authority had all reasons to give a clear answer to the company that it was unnecessary and hardly possible to use the RRO in the model of the activity described. One should not ignore the fact that the complainant never physically contacts customers when selling services to them. For example, when the complainant acts as an intermediary in the sale of air tickets, tickets in the form of electronic documents are sent to the buyer's e-mail after receiving payment to the company's bank account from the buyer's credit card via the Internet. Services are provided directly by the air carrier itself without any participation of the complainant.

Under such a business model, in the Council's opinion, there is no

reason to require the company to use the RRO. This would lead to an uncommon situation contrary to the world practice in which the complainant and similar companies, when receiving funds to their bank accounts through online payment systems, would have to process such transactions using RROs (as if they were receiving cash).

After that, in order to somehow comply with the law, they would have to send receipts printed with the help of the RRO to the customers, for instance, by mail or courier.

So far, in Ukraine the so-called “software RROs” which are intended to allow issuing receipts in the electronic form are being tested and are not introduced into industrial use. It should be taken into consideration that ticket buyers can be citizens or foreigners who are not present in Ukraine at the time of purchase of tickets and making payment for them (just imagine how costly and impractical it would be to send a Ukrainian receipt, let’s say, to Australia!).

In such a hypothetical scenario, many additional tricky questions would also arise (for example, what day should be considered as the day of payment if the non-resident buyer made online payment at night outside working hours of the company), to which there are no clear answers in the legislation and practice.

The Council decided to approach the STS of Ukraine with a request to examine the issue and provide the complainant with a new explanation instead of the one given by the MD STS earlier.

RESULT ACHIEVED:

Following the results of consideration of the issue, the STS of Ukraine issued a new explanation, in which it analyzed the complainant’s issue in detail. The tax authority agreed with the Council’s arguments partially. However, the final response to the complainant’s specific circumstances was clear: “Given the example provided, if a consumer, using the Internet, has ordered goods (services) and received them via the Internet in electronic form, and payment for these goods (services) was made using the EMP [electronic means of payment] using the following payment systems (Internet acquiring) [...], and there is no physical contact with the recipient of goods (services), such transactions are carried out without the use of RRO”.

Although the provided explanation does not have the formal status of an “individual tax consultation” (which exempts from liability if it is followed), it nevertheless has become an important and valuable confirmation that the complainant has built its business model in line with the law. The complainant was satisfied with the explanation and thanked the Council for its support. The case was successfully closed.

Subject: Tax criminal cases**With the Council's facilitation the law enforcement officers returned property seized during search****Complainee:**

State Fiscal Service of Ukraine (SFS), Financial Investigations Department of the MD SFS in Odesa region (FID)

COMPLAINT IN BRIEF:

The Council received a complaint from a gas station network from Odesa region. The company complained about the inactivity of the tax authority. Within pre-trial investigation police investigators carried out searches at two gas stations of the complainant. As a result of the searches, the tax authority seized fuel and lubricants, cash, documents and equipment of the company. The court arrested a part of the seized property, however obliged the authorised police investigator to return the rest of the property that was not arrested. For about three months the investigation body continued to retain the seized property without fulfilling the court ruling. The gas station network decided to solicit the Council's help.

ACTIONS TAKEN:

Having examined the case file, the investigator of the Council agreed that the complainant's position was substantiated. In particular, when considering the case, the investigator ascertained that the law enforcement officers had no legal grounds for not returning the property, and thus violated the company's property ownership right. The law gives the owner a full right to demand the return of his property and the court ruling execution by law enforcement officers. The Council recommended the FID to eliminate procedural violations and return the seized property to the complainant.

RESULT ACHIEVED:

Having upheld the Council's recommendations, the investigation body returned the seized property to the complainant in full. The case was successfully closed.

Subject: Tax inspections**Tax inspection — another error****Complainee:**

State Tax Service (STS), Main Department of STS in Kyiv City (MD STS)

COMPLAINT IN BRIEF:

A construction company from Kyiv appealed to the Council. The enterprise rents several land plots outside Kyiv for which, according to the legislation, it pays taxes at the secondary place of registration. In June 2018, the complainant concluded a rental agreement for one more land plot in a different region. In the tax return clarifying the land payment for 2018, the company made a mistake by indicating the controlling authority at the main location. When the complainant found out about the mistake, it submitted a clarifying calculation to the declaration following the legislation requirements and a consultation with the MD STS official. The company also additionally provided bank statements

that confirmed timely payment at the land plot location. However, as explained by tax authorities, declaring the obligation at the main place of registration (even if the error is corrected after some time) automatically triggered a mechanism of charging penalties for late land payment at the main place of registration. The company decided to appeal against the decision of the tax authority with the support of the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined the case file, the investigator acknowledged the complaint was substantiated. Despite quarantine restrictions, the Council managed to arrange the complaint consideration remotely jointly with the representatives of the complainant and the STS administration. The Council recommended the STS to ensure a full, comprehensive and impartial consideration of the company's complaint and cancel the tax decision.

RESULT ACHIEVED:

The tax authority upheld the Council's recommendations and satisfied the complaint of the construction company. The additional payments were dropped. The investigator successfully closed the case.

Subject: Inclusion in lists of risky taxpayers

Non-compliance with risky taxpayers' criteria: tax authority reconsiders a controversial decision

Complainee:

State Tax Service (STS), Main Department of the STS in Kharkiv region (MD STS)

COMPLAINT IN BRIEF:

The Council received a complaint from an enterprise selling electrical equipment and household appliances. The company complained about suspension of registration of the tax invoice, as a result of which the tax authority included the company in the risky taxpayers' list. Like the majority of our complainants, the enterprise learned about it accidentally — in the personal e-office of the taxpayer.

The controlling authority identified that the company complied with the risky taxpayers' criteria due to its contractor having been involved in risky operations. There was no information on what kind of operations was mentioned. The company's attempt to contact the representatives of the MD STS and find out the reasons for such a decision did not bring any result.

The enterprise sent additional documents to confirm the reality of transactions via the e-office of the taxpayer. As is known, the complainant timely paid amount of taxes in full and was not a debtor.

Not having received a response from the tax authority, the complainant solicited help from the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined the company's case file, the investigator acknowledged the complaint was substantiated. The Council appealed to the MD STS and asked to provide arguments on the reasons why the company was included in the risky taxpayers' list. Apart from that, the Council asked for a more detailed examination of the documents in favor of the taxpayer's good business practices.

RESULT ACHIEVED:

The MD STS additionally analysed the situation, examined the submitted documents of the complainant and changed its position in regard to the enterprise's actions. The company was excluded from the risky taxpayers' list. The case was successfully closed.

Subject: VAT invoice suspension

Documents adopted by the State Tax Service: investment company is able to register tax invoices again

Complainee:
The State Tax Service (STS)

COMPLAINT IN BRIEF:

A Ukrainian company being a branch of an international investment group, informed the Council that since February 2020, the tax authority had irregularly accepted its tax documents. Every 15 days, the VAT amount specified in tax invoices and adjustment calculations submitted for registration increased and in July 2020 already exceeded UAH 7 mn. This meant the complainant's counterparties did not receive a VAT tax credit in the respective amount. In the receipts received by the company from the STS it was stated that the document had been delivered but could not be accepted. The company was unable to find out on its own why the tax authority rejected tax documents. Registration invoices re-submission did not help resolve the issue. The Business Ombudsman Council got down to reviewing the complaint. Simultaneously with the Council, the company's case was considered by its partners, business associations, which the complainant additionally turned to.

ACTIONS TAKEN:

The team of investigators found the complaint substantiated and upheld the company's position. The Council recommended that the STS refrain from further non-acceptance of tax invoices and explain what this situation was caused by. The Council requested the tax authority to immediately register tax invoices in accordance with current legislation. At the earliest opportunity, the subject of the complaint was also referred for consideration to expert groups established under the STS and the Main Department of the STS in Kyiv.

Subject: Tax inspections

The decision in favor of the grain trader — the STS reviewed audit findings

Complainee:

The Main Department of the STS in Kyiv (MD STS)

RESULT ACHIEVED:

Thanks to the Council's and partners' joint efforts in early July 2020, the tax authority enabled the complainant to register tax invoices and adjustment calculations in the taxpayer's e-office. Thus, the complainant finally managed to register over a thousand of tax documents for a total amount of UAH 7.1 mn of VAT, while his counterparties could receive the expected tax credit. The case was successfully closed.

COMPLAINT IN BRIEF:

The Council received a complaint from a big grain trader headquartered in Geneva, Switzerland. The company has been present on the Ukrainian market of grain and oilseeds since 2017.

The company disagreed with the tax audit findings. During the inspection, the tax authority found that the company had not timely paid income tax. The problem was that company indicated the budget classification code 11021000 (income tax of private enterprises) instead of 11020300 (income tax of enterprises established with the participation of foreign investors) in the income tax payment order. A month later, based on the company's letter, the MD STS corrected payment of these tax liabilities, but later imposed fines over UAH 50k on the company for their late payment. Considering the tax decision illegal, the company turned to the Business Ombudsman Council for support.

ACTIONS TAKEN:

The investigator found the company's complaint substantiated. The Council upheld the company's position and recommended that the State Tax Service of Ukraine (STS) ensure a full, comprehensive and impartial consideration of the grain trader's case. Referring to the current case-law of the Supreme Court in the respective category of cases, the investigator concluded the supervisory authority had no reason to impose a fine on the company because the complainant had not evaded taxes: an error in defining the budget classification code is not the same as non-fulfillment of his tax obligation.

RESULT ACHIEVED:

The STS accepted the Council's recommendations and overturned the disputed decision. Additional payments for the complainant were dropped. The case was successfully closed.

ACTIONS OF STATE REGULATORS

Subject: Other

**The training to be resumed:
sports complex territory
rescued with the Council's
facilitation**

Complainee:

Ministry of Culture, Youth
and Sports, State Property
Fund of Ukraine

COMPLAINT IN BRIEF:

The children and youth sports school from Kyiv, as well as management of the sports complex appealed to the Council. It was a complaint in regard with possible illegal actions of the Ministry of Culture, Youth and Sports due to granting a lease of the sports complex to the other legal entity.

It turned out that a potential tenant planned to create a museum in one of the sports complex's premises where sports equipment was stored. For that reason, further renovation and construction of sports arena for training of young athletes became impossible.

Despite the fact that the school administration was against granting a lease of the premises of the sports complex, the tenant started authorisation procedure with the Ministry of Culture, Youth and Sports and the State Property Fund of Ukraine (SPFU). The sports complex administration did not have any information regarding conclusion of an agreement with the potential tenant.

Taking into account the risks of illegal seizure of the school territory, the administration forwarded the complaint to the Business Ombudsman Council.

ACTIONS TAKEN:

Having examined the case file, the investigator supported the complainant's position. The Council appealed to the Ministry of Culture, Youth and Sports, the SPFU and the Regional Department of the SPFU in Kyiv and asked to pay attention to obvious violations in the leasing procedure of the sports complex.

The Council learned that the potential tenant was originally one, but the lease document concerned a completely different tenant. In particular, it turned out that this document had been issued on the grounds of an application dated only two days before its issuance. According to the law, it is in fact impossible to complete the lease procedure within two days.

The most interesting thing was that the Ministry of Culture, Youth and Sports took part in the process of approving the lease. It should be noted that after the reorganization of the Ministry of Youth and Sports and the Ministry of Culture into the Ministry of Culture, Youth and Sports, a number of entities, including the sports complex of the complainant, came under control of the latter. However, the investigator ascertained that at that moment, the certificate of acceptance of such objects had not been signed yet. Therefore, the state body did not have the right to make any decisions regarding the sports complex.

The Council recommended to revoke the lease document and terminate the procedure for concluding an agreement with the potential tenant.

RESULT ACHIEVED:

The State Property Fund upheld the arguments of the Council and terminated the procedure related to granting a lease of the building of the sports complex. The school parent committee thanked the Council for help: "We express our sincere gratitude to the Business Ombudsman Council for supporting our school in the fight against illegal actions of government agencies that tried to seize a part of the territory that is a facility of Olympic, Paralympic and Deaflympic training. Thanks to timely intervention of the Council, we managed to defend the territory of the sports complex and did not allow the authorities to commit illegal actions". The case was successfully closed.

Subject: State Architectural and Construction Inspectorate (DABI)

Construction completed — the company receives a long-awaited certificate from DABI

Complainee:

State Architectural and Construction Inspectorate (DABI)

COMPLAINT IN BRIEF:

A construction company from Kyiv appealed to the Council. The complainant finished construction of apartment buildings (Optymisto Housing Complex) in Kyiv region. In order to set apartment buildings into operation, the company had to receive a conformity certificate from the DABI that would confirm construction works completion. However, the controlling authority refused to issue such a document and as a result, setting of buildings into operation was delayed.

According to the DABI's position, the company did not provide necessary documentation on engineering facilities of the buildings. Nevertheless, the complainant submitted the respective application and the certificate of readiness of the construction object to the controlling authority in a form provided by the law. The company provided additional documents to the Chief Construction Supervision Officer. During the inspection he did not express any concern about the existing documentation. However, the DABI refused to issue the certificate to the company. After unsuccessful attempts to repeatedly submit the necessary documents for receiving the certificate, the company lodged a complaint to the Business Ombudsman Council.

ACTIONS TAKEN:

The investigator examined case materials and acknowledged the complaint was substantiated. The Council appealed to the DABI and recommended to ensure a due and impartial consideration of the complaint's application and issue the conformity certificate of the construction objects of Optymisto Housing Complex. As long as DABI representatives did not have any claims related to the complainant's documents during the construction inspection, non-issuance of the certificate was considered as violation of the company's rights and legitimate interests. It was also obvious that the supervisory authority had delayed issuance of the certificate, which the complainant had to receive within ten working days from the date of registration of the application.

Subject: Other state regulators

“Green light” from the State Labor Service: company’s activities are in line with the labor protection legislation

Complainee:

Main Department of the State Labour Service in Dnipropetrovsk region (State Labor Service)

RESULT ACHIEVED:

The DABI upheld the Council’s recommendations and issued the conformity certificate for the constructed apartment buildings. The first three buildings were set into operation. The case was successfully closed.

COMPLAINT IN BRIEF:

The Council received a complaint from a company from Dnipropetrovsk region that renders technical audit services. The enterprise could not register the Declaration of Compliance of material and technical facilities with the requirements of labor protection legislation (Declaration of Compliance).

The registration of such a declaration would give the company a right to conduct evaluation and assessment of technical state of high-risk equipment.

When the complainant first appealed to the department of the Center of Administrative Services (CAS) in Dnipro, he got rejected. Having appealed to the CAS for the second time, the complainant faced bad luck: the declaration was returned with a signature of rejection by an unknown person. The Council commenced immediate consideration of the company’s complaint.

ACTIONS TAKEN:

Having examined case materials, the investigator came to the conclusion that the decision to refuse the declaration registration was ungrounded. This indicated a violation of the legitimate rights and interests of the company.

According to the law, the territorial body of the State Labor Service has to register the Declaration of Compliance within five working days from the date of its receipt. Unfortunately, for our complainant this process lasted more than three months.

In the letter to the State Labor Service the Council asked to ensure a comprehensive, impartial and timely consideration of the enterprise’s complaint and explain the reasons for refusing registration of the previous documents. In particular, the Council recommended to immediately take prompt measures for restoring legal rights of the complainant in case if violation of the current legislation by public officials was detected.

RESULT ACHIEVED:

Thanks to the Council’s interference and intensive actions of the complainant, the State Labor Service satisfied the company’s complaint and registered the Declaration of Compliance of material and technical facilities with the requirements of the labor protection legislation. The case was successfully closed.

CUSTOMS ISSUES

Subject: Customs valuation

Kyiv Customs Office ceases systematic adjustments of customs value of diodes imported from China

Complainee:

State Customs Service (SCS),
Kyiv City Customs of State
Customs Service of Ukraine
(Kyiv Customs Office)

COMPLAINT IN BRIEF:

The Business Ombudsman Council received a complaint from a supplier of lamps and light equipment. The enterprise complained that Kyiv Customs Office practiced unjustified adjustments of the customs value of goods imported from China. Last year the enterprise tried to appeal the decision of the customs authority several times but did not get any result. Kyiv Customs Office responded that the enterprise did not provide additional documents needed to adjust the customs value of goods. Despite the fact the complainant submitted all necessary and possible documents the situation did not change. The company decided to seek help from the Council.

ACTIONS TAKEN:

The investigator examined case materials and revealed the evidence of violation of the enterprise's rights by the customs authority. The Council asked the administration of the SCS and Kyiv Customs Office in writing to cease unjustified adjustments of the customs value of goods from China.

RESULT ACHIEVED:

Kyiv Customs Office upheld the recommendations of the Council. The complainant informed the investigator that after the Council's interference the customs clearance of the relevant supporting documents was taking place without adjustments.

Subject: Customs other

Mission "unblock customs clearance of raw materials" complete

Complainee:

State Customs Service (SCS),
Chornomorska Customs of
the State Customs Service
(Chornomorska Customs)

COMPLAINT IN BRIEF:

A large enterprise from Mykolaiv region that imports raw materials, complained about withdrawal of permits for placement of goods in the special regime (the customs regime of processing) necessary for customs clearance. It is important to note that such a regime is favorable for producers as it exempts them from taxation when importing goods from abroad.

The enterprise appealed against the decision of the customs authority concerning withdrawal of the permit to the court. The document suspension allowed to continue cargo unloading and the customs clearance of barges with raw materials.

However, still having a strong intention, the customs did not want to let imported raw materials go into the country, and made a second decision to revoke the same permit.

The second decision, although duplicated the previous one, was not formally suspended during the trial, and made it impossible to proceed with the customs clearance respectively. The enterprise appealed against the second customs decision to the court, but the controlling authority made a third decision. The customs had taken 9 similar decisions in a row for a month. Thus, the complainant`s cargo could have remained in port for an indefinite period of time that could result in serious losses for the enterprise and lead to return of goods to a sender. The enterprise immediately asked the Council for help.

ACTIONS TAKEN:

The investigator of the Council carefully examined the case file and acknowledged the complaint was substantiated. The Council appealed to the customs administration and asked to refrain from taking duplicate decisions on withdrawal of the same permit for placement of goods in the special regime.

RESULT ACHIEVED:

Due to the Council's facilitation the customs authority stopped taking the same decisions on withdrawal of permits for placement of goods in the customs regime of processing in the territory of Ukraine.

The enterprise got an opportunity to perform customs clearance of raw materials that were in port and is currently waiting for the court`s decision in this regard. The complainant himself informed the investigator about this fact. The case was successfully closed.

ACTIONS OF THE NATIONAL POLICE

Subject: Prosecutor's Office criminal case initiated

It is all gas meter's fault: a criminal proceeding finally terminated

Complainee:

Main Department of the National Police in Kyiv region (MD NP)

COMPLAINT IN BRIEF:

The Council received a complaint from two manufacturers of building structures. The companies whose production was located in the same territory complained about a law enforcement agency pressure.

Following the PJSC Kyivoblغاز's motion, the law enforcement agency registered a criminal proceeding against the enterprises under which a pre-trial investigation was taking place. It turned out that when one company called the gas distribution network operator to install a new gas meter, the latter detected a malfunction in the old device and drew up a report concerning this violation. Then Kyivoblغاز decided to recalculate the consumed gas, and, as a result, it imposed a debt of more than UAH 47 mn on the complainant. After the examination, the company ascertained that the meter failed due to unqualified actions of the PJSC Kyivoblغاز employees that led to its breakdown.

In turn, the gas distribution network accused the company of deliberately changing meter settings and thus underestimating gas

consumption. At the same time, the position of PJSC Kyivoblgaz was refuted in court and debt existence was not confirmed either.

Within the criminal proceeding, the pressure of law enforcement officers continued despite the court decision. The investigators conducted searches and seized the companies' property. For that reason, the enterprises could not operate properly. There was also a risk of a complete cessation of gas supply to the enterprise. At this stage, the Business Ombudsman Council commenced the case consideration.

ACTIONS TAKEN:

The investigator of the Council supported the complainants' position and acknowledged the complaint as substantiated. The Council appealed to the MD NP and recommended to terminate the criminal proceeding in the case of the manufacturer of building structures due to absence of a crime. Moreover, the Council drew the attention of police officers to the court's decision, which was also on the complainants' side. Under the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the Prosecutor General's Office, the Council raised the complaint at the meeting of relevant expert groups with participation of law enforcement agencies.

RESULT ACHIEVED:

Thanks to effective communication of the Council, the MD NP terminated the criminal proceeding in the complainants' case. The enterprises resumed normal operation. The case was successfully closed.

ACTIONS OF STATE SECURITY SERVICE OF UKRAINE

Subject: State Security Service's procedural abuse

SSS returns mistakenly seized property to owner

Complainee:

State Security Service of Ukraine (SSS)

COMPLAINT IN BRIEF:

A Patriot.Legal law firm from Kyiv appealed to the Council for help as long as it could not return property that had been seized during a search.

The SSS investigators conducted the search in the premises, where the office of the law firm was situated. The law enforcers seized all computer equipment, work documents and seals of the company that were later attached as material evidence to the criminal proceeding's materials. The Complainant urged the search was illicit and in fact conducted in completely other premises, not sanctioned by the court.

As a result of the law enforcers' raid, the company suspended its business activity and suffered not only financial losses, but also considerable reputational damage.

Due to illegality of the search and violation of procedural legislation, the complainant appealed against the seizure of property in court. The law firm, in fact, was not involved in crimes investigated within the criminal proceeding. Although the court made a decision in favor of the company, the SSS investigators did not execute the resolution for a long time. At that point the Council started consideration of the complaint.

ACTIONS TAKEN:

Having examined the case file, the investigator acknowledged that the complaint was substantiated. The Council supported the law firm's position and recommended the State Security Service to execute the court's resolution and return the seized property to its legal owner — the complainant.

RESULT ACHIEVED:

Due to the Council's interference the state body returned the seized property to the complainant in the shortest possible time. Currently the complainant is challenging SSS actions that caused damage to him in court.

ACTIONS OF THE MINISTRY OF JUSTICE

Subject: MinJustice Registration Service

**Failed raidership attempt:
MinJust recovers true data
on enterprise**

Complainee:
Ministry of Justice of Ukraine
(MinJust)

COMPLAINT IN BRIEF:

The Council received a complaint from the sole owner and director of a private enterprise from Dnipropetrovsk region. The state registrar had updated the information about the founders and the director of the company in the official registry, which came to the real owner's knowledge by chance. The complainant immediately appealed to the MinJust Panel on consideration of complaints in the sphere of state registration seeking cancellation of illicit decisions. However, after two weeks of waiting the complaint had not been considered. In order to speed up the consideration of the complaint under the administrative appeal procedure, the enterprise appealed to the Council.

ACTIONS TAKEN:

It should be noted that the Council, unlike the Panel of the MinJust, does not have direct access to the documents prepared or accepted by the state registrar during the registration procedure, therefore it cannot check itself the legitimacy of the new data about the company. However, as an independent mediator between the business and the state body, the Council is capable of drawing attention to the case and speed up its consideration that was later achieved.

Thus, in the letter to the Panel of the MinJust the Council asked to immediately consider the company's motion and provide a full, comprehensive and impartial consideration of the complaint. The Council also handed over case files to the expert group established by virtue of the Memorandum of Cooperation between the Ministry of Justice of Ukraine and the Council dated September 15, 2015.

RESULT ACHIEVED:

Within three weeks after receipt of the complaint, the Council helped to restore justice: the MinJust Panel cancelled disputed registration actions, having recovered credible information about the owner and the director of the enterprise, while the relevant state registrars' access keys were temporarily suspended. The case was successfully closed.

Subject: MinJustice Registration Service

State register — a place for authentic information

Complainee:

Ministry of Justice (MinJust)

COMPLAINT IN BRIEF:

The Council received a complaint from Kharkiv printing house. The company complained about the fact that inappropriate information about the company was reflected in the state register. When the enterprise was attacked by raiders, other persons became owners and CEO of the printing house in the register. Although the court had obliged the MinJust to cancel illegal registration actions, the correct data about the complainant did not appear in the register. Therefore, the company appealed to the Business Ombudsman Council for help.

ACTIONS TAKEN:

Having examined the case file, the investigator acknowledged the complaint was substantiated. The Council recommended the Ministry of Justice, the Department of Registration of Kharkiv City Council (Registration Department) and Department of Registration of Kherson City Council (State Registration Department) to reflect proper information about the complainant in the register. Despite the fact that illegal registration actions were cancelled, authentic information about the owners and the CEO of the printing house was not reflected. Raiders had also managed to change the company's address to the other region. The printing house could not correct the data about the company on its own, thus the investigation was continued by the Council. Taking into account quarantine related restrictions, the Council ensured consideration of the complaint between registration bodies from different Ukrainian regions by conference call.

RESULT ACHIEVED:

After controlling authorities agreed on common actions, proper information about the complainant was restored in the state register.

Subject: MinJustice Registration Service**Raidership attack on international investment company fought back****Complainee:**

Ministry of Justice (MinJust)

COMPLAINT IN BRIEF:

The company from Mongolia appealed to the Business Ombudsman Council due to illegal takeover of its Ukrainian enterprise. The complainant suddenly learned about the raidership attack: unknown persons forged documents and changed the information about the company in the Unified State Register (USR). As a result of illegal registration actions, the headquarters office lost control over the subsidiary company in Ukraine that could lead to loss of its assets. That was the time when the Council received a complaint from the company asking for help.

ACTIONS TAKEN:

The investigator of the Council acknowledged the complaint was substantiated. The Council provided guidance to representatives of the Mongolian company about the mechanisms of protection against raidership and suggested appealing to the Collegium tasked with consideration of complaints against decisions, actions or inaction of the state registrar (MinJust Collegium). In the letter of support of the company's position, the Council recommended the Ministry of Justice to restore true data about the company in the USR as soon as possible.

Based on the Memorandum of Partnership and Cooperation between the Business Ombudsman Council and the Ministry of Justice, the Council asked to speed up consideration of the investment company's complaint as much as possible due to risk of losing its assets. The MinJust Collegium considered the company's complaint during a few days.

RESULT ACHIEVED:

The MinJust upheld the Council's recommendations. "Thanks to prompt and professional help of the Business Ombudsman Council, the Ministry of Justice came to correct, and, most importantly, legal conclusions on the situation and cancelled illegal registration actions that led to the company's seizure", the complainant personally told.

ACTIONS OF LOCAL GOVERNMENT AUTHORITIES

Subject: Local government authorities other

Household goods stores: to work or not to work during quarantine?

Complainee:
Kyiv City State Administration

COMPLAINT IN BRIEF:

The Council received a complaint from a well-known retail chain of household, health and beauty goods. The company complained about actions of local authorities due to the fact that in several cities the stores were ordered to close. At the same time, other stores of the network were allowed to work. The company could provide the population with hygiene products and personal protective equipment for the period of quarantine in connection with COVID-19 pandemic. However, in a few cities the trade network had to close due to local authorities' decision. In particular, the complainant informed about the episodes when authorities allowed the stores to work only in case of withdrawing a range of goods not considered to be hygiene products from sales. The company appealed to the Business Ombudsman Council for help.

ACTIONS TAKEN:

The quarantine announced in March this year had a significant impact on the Council's operation. From now on, the Council started to receive complaints from businesses related to quarantine restrictions. The investigator immediately considered the company's case. The Council appealed to the Cabinet of Ministers and requested a clarification on the norms of the Resolution of the Cabinet of Ministers #211. This Resolution is applied to trade and consumer services companies trading in hygiene products which the complainant's company belonged to.

The authority did not rush to give a reply to the Council and only responded to its appeal 30 days later. The letter, which the Council received from the Ministry for Development of Economy, Trade and Agriculture, did not include the clarification requested. Thus, the Council repeatedly appealed to the Cabinet of Ministers asking for clarification.

RESULT ACHIEVED:

Not having received clarification from the Cabinet of Ministers, the Council closed the case, since it lost its relevance. Once strict quarantine restrictions were loosened, the trade network of household goods resumed work of the previously closed stores.

3. COOPERATION WITH STAKEHOLDERS

One of the Business Ombudsman Council's key goals is providing effective systemic communication of business with the authorities, government and local self-government agencies, as well as state-owned enterprises or subordinate to government agencies.

3.1. THE STATUS OF THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE"

2014

Currently, the BOC operates on the basis of 2014 Resolution of the Cabinet of Ministers of Ukraine. But five years of the BOC's practice has proven that the office needs institutionalization.

2016

In 2016, the bill on the BOC was initiated by the Cabinet of Ministers, but the Verkhovna Rada of the previous convocation adopted the draft law only in the first reading.

2020

In June 2020, 39 deputies (from almost all factions) co-authored the new draft law "On the Business Ombudsman Institution in Ukraine" (No 3607).

STAKEHOLDERS' SUPPORT

The bill was supported by three Verkhovna Radas Committees:

- the Committee on Economic Development
- the Committee on Anti-Corruption Policy
- the Committee on Ukraine's Integration into the European Union

Several business associations that unite thousands of business throughout Ukraine, also emphasize the necessity to institutionalize the Business Ombudsman Office.

Within the Istanbul Anti-Corruption Action Plan the OECD recommended the Government of Ukraine to strengthen the BOC by adopting the law providing the BOC with necessary powers for effective work.

Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, supported all key provisions of the bill. As of now, the document is awaiting the first reading.

THE LAW IS NEEDED IN ORDER TO:

1

oblige bodies outside the supervision of the Cabinet of Ministers (prosecutors, local self-governments, security service) to cooperate with the Business Ombudsman (BO);

2

grant BOC investigators access to information with restricted access for investigation purposes (subject to keeping its confidentiality);

3

strengthen the responsibility of government officials for refusal to provide accurate and on time information at the request of the BO;

4

systematize eligibility criteria for lodging and rejecting complaints, determine a clear procedure for their review;

5

formalize the right of the BO to meet with civil servants, to be received by the Prime Minister and to present findings and systemic recommendations at the meetings of the Cabinet of Ministers, Verhovna Rada, and Verhovna Rada committees.

Adoption of the Law will be a good signal for Ukrainian and international investors that Ukraine uses all the tools to protect business interests against possible malpractice of state bodies.



ANSWERS TO CONCERNS RAISED BY SOME DEPUTIES

1

CONSTITUTION DOES NOT PROVIDE FOR THE BOC

The most respectful Koretsky Institute of the State and Law at the National Academy of Sciences of Ukraine confirmed constitutionality of all key elements of the draft law in their review. A number of other bodies functioning in Ukraine are not specifically mentioned in the Constitution.

2

BOC IS AN NGO TASKED WITH PERFORMING STATE FUNCTIONS

BO is not a state body; it is a soft power that acts only through recommendations. State bodies enjoy a full discretion in implementation of the BO recommendations and are only obliged to explain reasons for not implementing them if they choose so.

3

EXTRA BURDEN FOR STATE BUDGET

The Law clearly provides for only voluntary contributions from legal sources. So far, 100% of financing comes from the EBRD-Ukraine Stabilization and Sustainable Growth Multi-Donor Account.

4

BOC INVESTIGATORS WILL GET ACCESS TO SECRET AND CONFIDENTIAL INFORMATION

Access to information for internal use is essential for effective analysis of state bodies' decisions affecting business. The Law does not provide the BOC with any access to state secrets, while all of the confidential information is received by the BOI from complainants. Investigators will carry full responsibility for unlawful use of any information.

5

LAW GRANTS IMMUNITY FOR BO AND HIS/HER DEPUTIES

The current version of the draft law only requires consent of the Prosecutor General regarding actions of line prosecutors against BO or his/her deputies. The same regime is also applied in a number of other cases, i. e. in the case of attorneys, etc. This provision can be amended in the second reading, or eventually dropped entirely.

The law should be adopted, since continuation in the present format will be suboptimal for business and will benefit incompetent or corrupted state officials that are harassing business. Cooperation with the BOC on the part of several state bodies will remain voluntary and, hence, volatile. BOC investigators will not have an effective set of tools, including access to proprietary information, for conducting investigations effectively. Investors will be concerned that Ukraine does not want to strengthen the effectiveness of its institutions to combat corruption and malpractice of state officials. The solution of systemic business issues will be slower, and in some cases it will even stall due to the fact that the BO does not have a guaranteed opportunity to discuss these issues with the Government.

3.2. COOPERATION WITH STATE BODIES

THE BOC HAS SIGNED

12 MEMORANDA OF COOPERATION WITH



the State Tax Service

the State Customs Service

the State Fiscal Service

the Prosecutor General's Office

the State Security Service of Ukraine

the Ministry of Ecology and Natural Resources

the State Regulatory Service

the Ministry of Justice

the National Anti-Corruption Bureau

Kyiv City State Administration

the National Police

the National Agency on Corruption Prevention

EXPERT GROUP MEETINGS

Expert groups are a platform for open and transparent consideration of specific complaints, as well as improvement of the legislation that regulates entrepreneurial activity and removal of obstacles to conducting business in Ukraine.

STATE TAX SERVICE

STATE CUSTOMS SERVICE

NATIONAL POLICE

PROSECUTOR'S OFFICE

STATE SERVICE OF GEOLOGY AND SUBSOIL

MINISTRY OF JUSTICE

TOTAL

Number of meetings and/or online discussions

13

2

2

1

1

1

20

Number of cases considered during these meetings

96

7

36

36

2

4

181



3.3. REGIONAL WEBINARS WITH THE MINISTRY FOR DEVELOPMENT OF ECONOMY, TRADE AND AGRICULTURE

Jointly with the Ministry for Development of Economy, Trade and Agriculture of Ukraine (Ministry of Economy), the Business Ombudsman Council held a number of regional webinars for business and local authorities. In organizing the events, we aimed to familiarize entrepreneurs from different regions of Ukraine with the Business Ombudsman Council as a tool to represent their interests in relations with state bodies and local government authorities, state-owned enterprises and their officials.

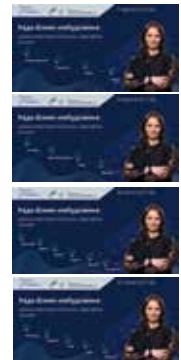
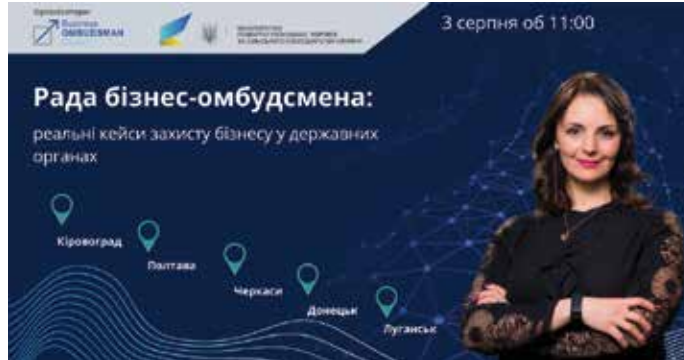
Within two weeks we held 5

5 MEANINGFUL
WEBINARS

500

PARTICIPANTS

entrepreneurs and local
government officials
from different regions
of the country



WE TALKED



about the principles
of work and results of
the BOC operations



looked into
current
business issues



established
contacts with
local partners

07
AUGUST

Oblasts:
Khmelnitskiy,
Ternopil,
Rivne,
Volyn

27
JULY

Oblasts:
Kyiv,
Vinnytsia,
Zhytomyr,
Sumy,
Chernihiv

03
AUGUST

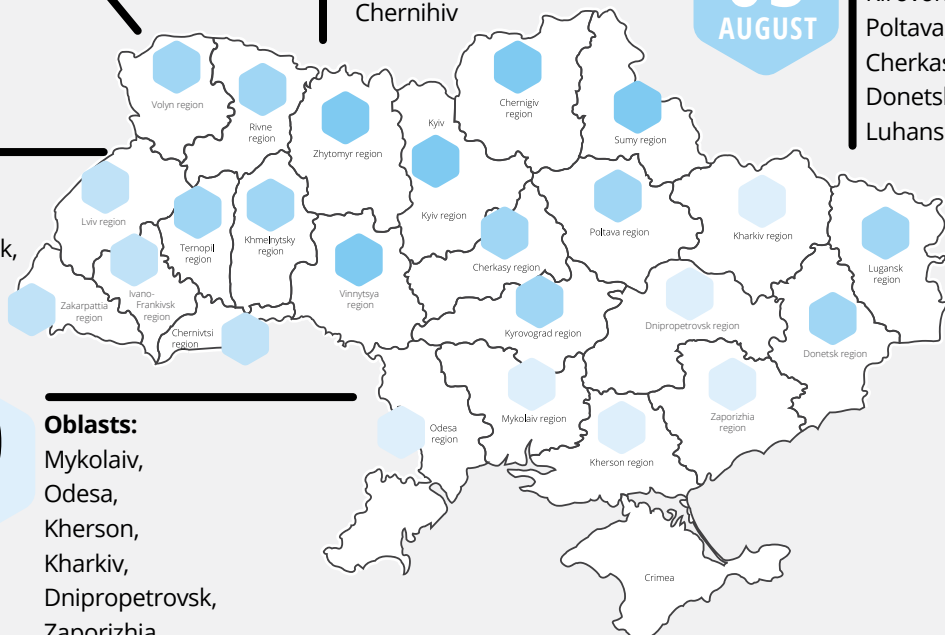
Oblasts:
Kirovohrad,
Poltava,
Cherkasy,
Donetsk,
Luhansk

10
AUGUST

Oblasts:
Zakarpattia,
Ivano-Frankivsk,
Lviv,
Chernivtsi

30
JULY

Oblasts:
Mykolaiv,
Odesa,
Kherson,
Kharkiv,
Dnipropetrovsk,
Zaporizhia



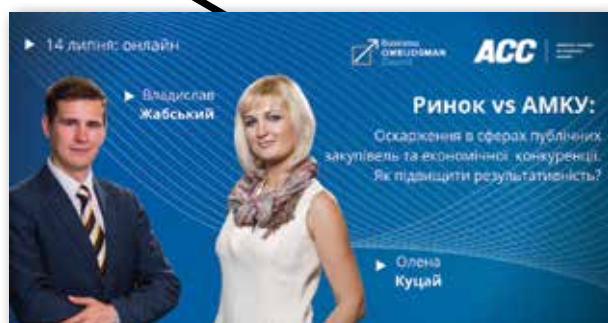
3.4. KNOWLEDGE WEBINARS WITH ACC AND UNBA

Jointly with our partners from the American Chamber of Commerce in Ukraine (ACC) and the Ukrainian National Bar Association (UNBA) we continued conducting online meetings on actual business issues.

WITH ACC WE CONDUCTED TWO WEBINARS FOR BUSINESSES FOCUSING ON:

14
JULY

"MARKET VS AMCU. APPEALS IN PUBLIC PROCUREMENT AND ECONOMIC COMPETITION AREAS. HOW TO INCREASE EFFICIENCY?"

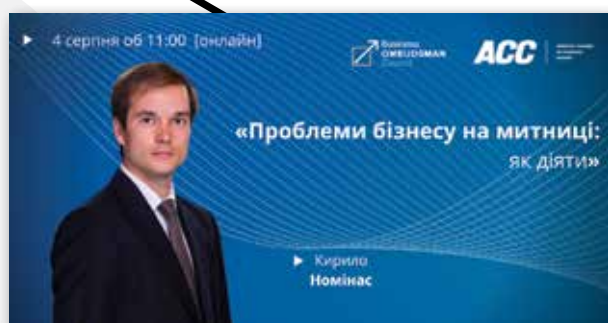


Following issues were raised by the BOC investigators during the webinar:

1. Common violations of the law when making public procurement. The order and procedure for lodging public procurement related complaints with the AMCU Collegium
2. Participation of the Business Ombudsman Council in the consideration of public procurement related complaints: practical cases and advice
3. Monitoring of public procurement procedures by the State Audit Service as a control mechanism: practical aspects
4. Typology of complaints received by the Council. What to expect from the AMCU in certain investigations?
5. Ways to enhance interaction with the AMCU

04
AUGUST

"BUSINESS ISSUES AT THE CUSTOMS: HOW TO ACT"



Following issues were raised by the BOC investigators during the webinar:

1. What to do when the customs clearance is unreasonably delayed?
2. Determination of customs value: how to prove the real price and refund overpayments?
3. Intervention of law enforcement bodies in the customs inspections
4. Changing the ideology of customs control: post-customs audit

WITH UNBA WE CONDUCTED THREE ONLINE EVENTS FOR ADVOCATES FOCUSING ON:

10
JULY

"ACTUAL BUSINESS ISSUES IN THE TAX SPHERE: EXPERIENCE OF THE BOC IN CONSIDERING FOUR THOUSAND COMPLAINTS"



Following issues were raised by the BOC investigators during the webinar:

1. Tax related complaints with which businesses most often turn to the BOC
2. Special aspects of business complaints related to SMCOR system operation: tax invoice suspension, risky taxpayers' lists
3. Disputed issues arising from tax audits and appealing against their results
4. Special aspects of complaints related to operation of the system of electronic administration of VAT;
5. Current trends of complaints on VAT refund

28
JULY

"ACTIVITIES OF THE TAX POLICE FINANCIAL INVESTIGATION BODIES IN THE CONTEXT OF REFORMING"

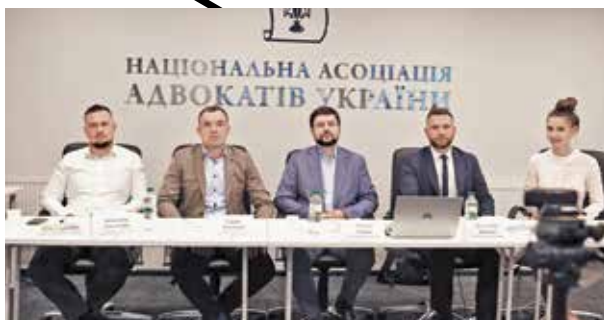


Following issues were raised by the BOC investigator during the webinar:

1. The Business Ombudsman Council and its support for business in case of issues with the tax police and other law enforcement bodies
2. Special aspects of the BOC experience in considering complaints from business in criminal proceedings in the tax sphere
3. Systemic recommendations of the Council on ceasing malpractice episodes of state bodies in relation to the business
4. Establishing a common body on investigation of crimes in economic and tax spheres. The BOC position and proposals.
5. Advice for business and attorneys on lodging complaints about actions or inactivity of law enforcement bodies

20
AUGUST

“NON-ENFORCEMENT OF COURT DECISIONS. EXPERTISE OF THE BUSINESS OMBUDSMAN COUNCIL”



Following issues were raised by the BOC investigators during the webinar:

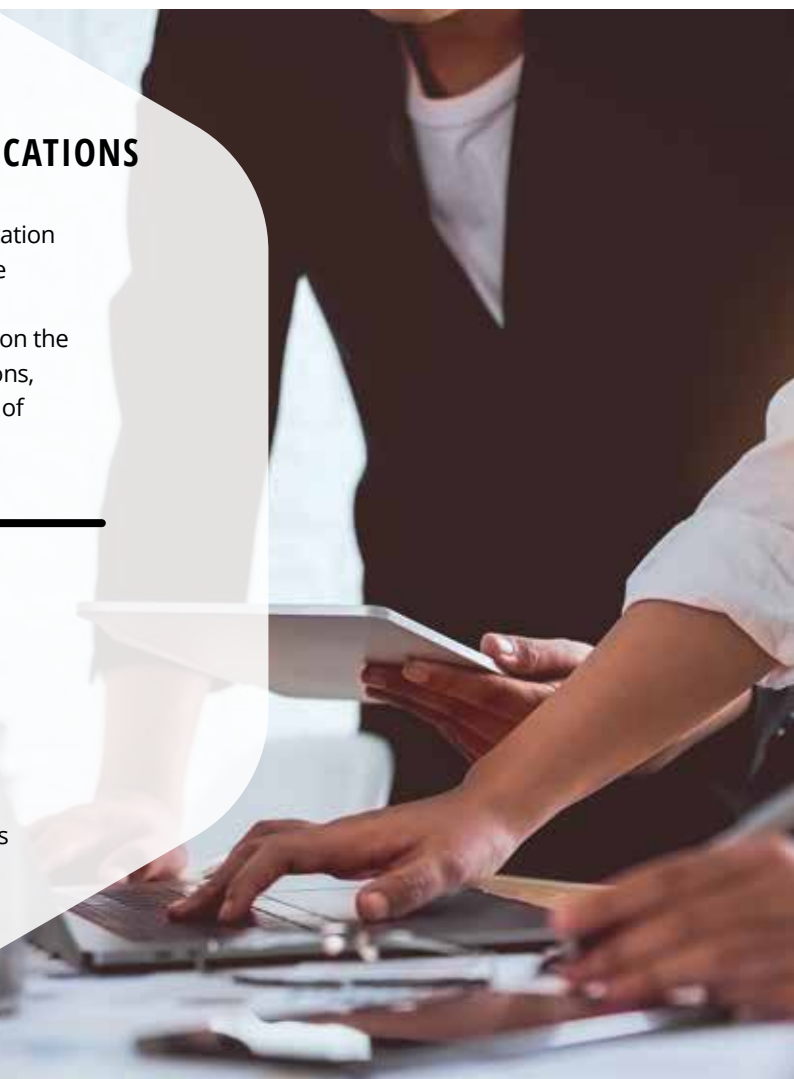
1. BOC statistics on complaints regarding non-enforcement of court decisions
2. Tools used by the Council in processing complaints on non-enforcement of court decisions
3. Main types of malpractice by state bodies on non-enforcement of court decisions
4. Non-enforcement of court decisions by tax authorities. Practical cases.
5. Non-enforcement of court decisions by law enforcement bodies. Practical cases.
6. Issue of enforcing decisions of international courts in Ukraine. Practical cases.
7. Recommended changes to the legislation. Why is there a need to implement systemic recommendations?

3.4. PUBLIC OUTREACH AND COMMUNICATIONS

The Business Ombudsman Council uses public communication to report trends of appeals submitted by companies, voice systemic business issues and suggest ways to solve them. It is worth mentioning that we cooperate with media only on the free of charge basis, providing from our side expert opinions, legal analysis and recent statistics concerning malpractice of state bodies.

THE MEDIA

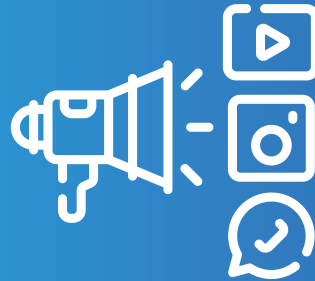
Given the mission to protect legal rights of entrepreneurs and improve the business climate in Ukraine, we enjoy the willingness of journalists to communicate our work results. The level of legal expertise and the skill to convey the message through is also highly appraised by media channels — our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.



PUBLICATIONS

Since launch of operations in May 2015, the Business Ombudsman and his Office were cited in the media

26700+
PUBLICATIONS



99.9%
MENTIONS

being positive and neutral

Estimated value of publications in Q3 2020, based on the assessment of the Ecosap media monitoring agency, was

UAH
5,6
MILLION

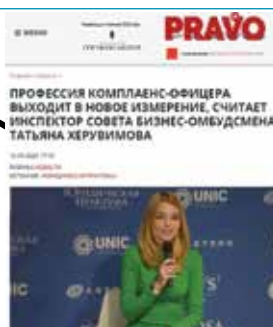
THIS QUARTER OUR INTERVIEWS WERE PUBLISHED IN:

SPECIALIZED LEGAL MEDIA:

Yurydychna Gazeta



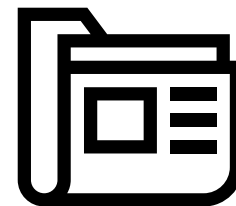
Yuridicheskaya Praktika



Zakon i Biznes



UJBL



BUSINESS MEDIA:

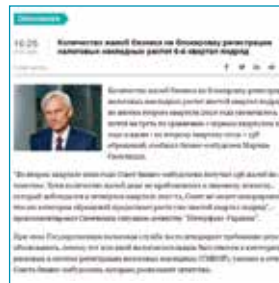
Delo.ua



Economichna Pravda



Interfax-Ukraine



LIGA BUSINESS



Suspilne



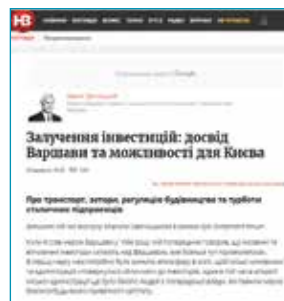
Taxlink



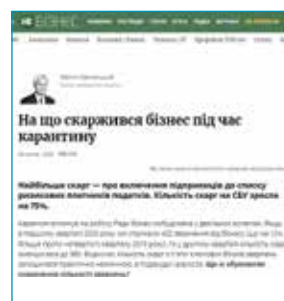
Private Entrepreneur



Novoe Vremia



NV Business



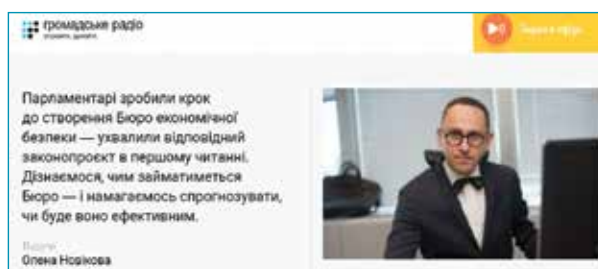
UA-Times



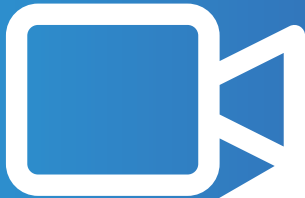
The Page



Hromadske Radio



WE WERE ALSO
PRESENTING
RESULTS OF OUR
OPERATIONS ON TV:



First Business Channel



Rada TV channel



UA: Pershyi



UA: Pershyi



KRT



Ukraine 24



Channel 4



Channel 5



Pravda Tut



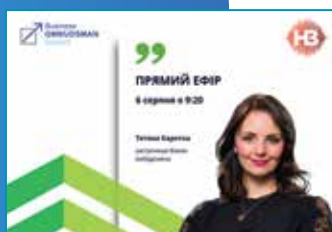
Espresso TV



AND RADIO

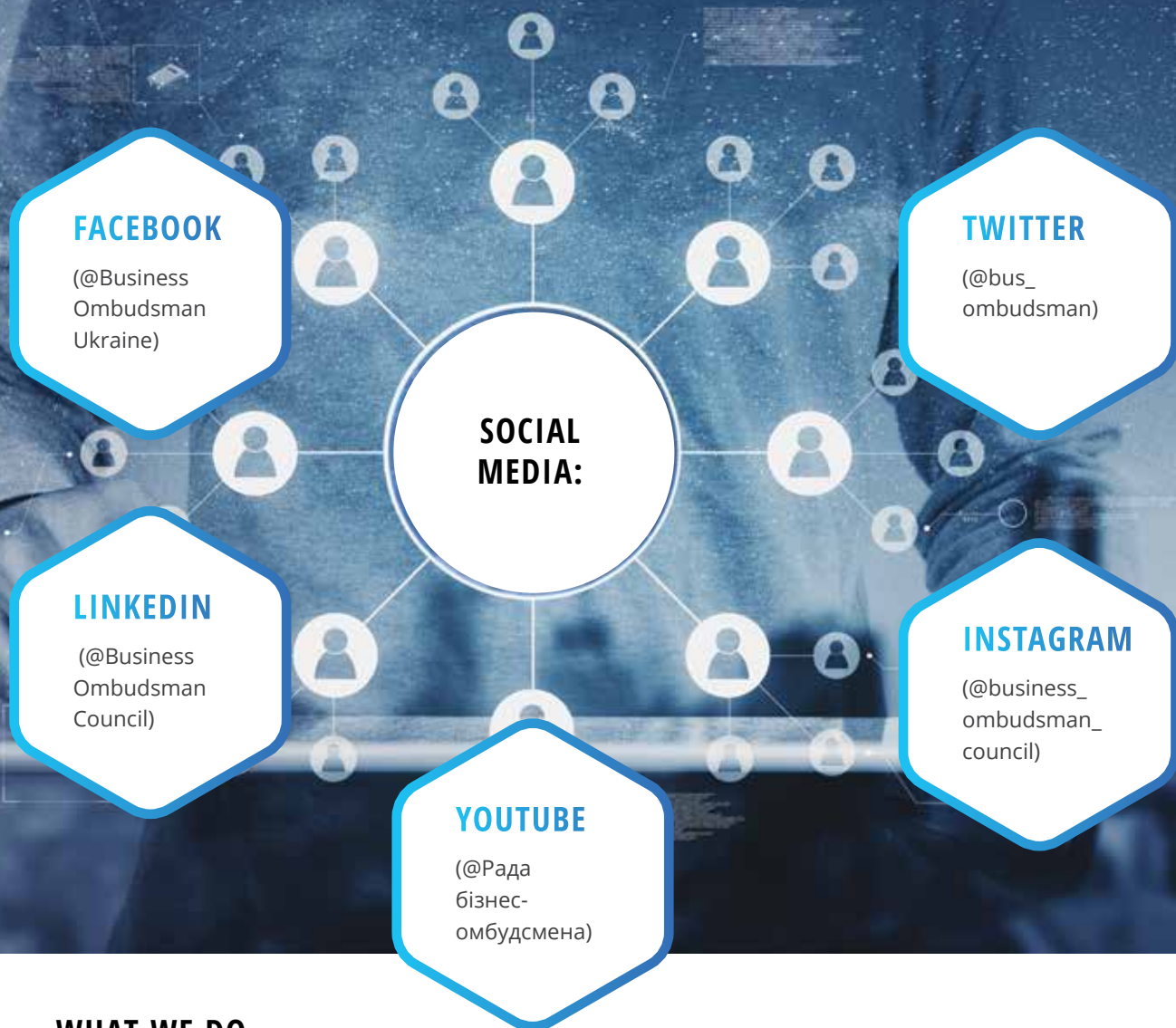


Radio NV



Emigrantske Radio





WHAT WE DO IN SOCIAL MEDIA:

- Showcase successful stories.
Learn lessons from unsuccessful ones
- Produce our own content.
Capture videos
- Communicate systemic business issues.
Suggest possible solutions
- Share our articles, columns
and other useful content
- Post important news.
Share thoughts and views
- Announce our events. Livestream them
- Communicate with followers.
Swiftly respond to their questions

EVENTS

04/07

Meeting with the Deputy Prosecutor General of Ukraine Ihor Mustetsa



Organised by
Prosecutor General's Office

08-09/07

VI Ukrainian Antitrust Forum



Organised by
Legal Practice publishing office

30/07

Meeting with Ukraine Invest

Organised by
Ukraine Invest

04/08

Meeting with the Austrian Ambassador — H.E. Mr. Gernot Pfandler

Organised by
Embassy of Austria in Ukraine

06/07

Public discussion "Fighting Corruption as a Prerequisite for Business Development"

Organised by
National Agency on Corruption Prevention

20/07

Workshop «Launching and Implementing a Collective Action»



Organised by
Basel Institute on Governance

14/08

Meeting of the State Tax Service Board



Organised by
State Tax Service of Ukraine

08/07

Meeting with Roman Leshchenko, Head of State Service of Ukraine for Geodesy, Cartography and Cadaster of Ukraine

Organised by
State Service of Ukraine for Geodesy, Cartography and Cadaster of Ukraine

23/07

Anti-corruption Sectoral Working Groups meeting

Organised by
Cabinet of Ministers of Ukraine

19/08

Meeting with the Administration of the Main Department of the State Tax Service in Kyiv region



Organised by
State Tax Service in Kyiv region

29/07

Ukrainian Corporate Governance Online Forum

Organised by
Kyiv School of Economics

03/09

Round table "Anti-Raidership Interdepartmental Council on Business Protection under the President of Ukraine: Proposals on Mechanism and Rules of Procedure"



Organised by
Media Centre "StopCor"

07/09

Expert Group Meeting with the participation of the Prosecutor General's Office



Organised by
Prosecutor General's Office

09/09

V International Business Protection Forum



Organised by
Legal Practice publishing office

10/09

Meeting of the Prosecutor General of Ukraine Iryna Venediktova with the business community



Organised by
Prosecutor General's Office

10/09

Kyiv Invest Forum 2020



Organised by
Kyiv City State Administration

10/09

Donors Coordination Meeting

Organised by
State Entrepreneurship and Export Development Agency

11/09

Law&Trade Forum: all about international trade in one day



Organised by
Ukrainian Advocates' Association

16/09

International Compliance Forum



Organised by
Legal Practice publishing office

16/09

General Meeting



Organised by
Ukrainian Network of Integrity and Compliance (UNIC)

17/09

Online meeting with the Business Ombudsman Council "Business Moving Forward Fighting Corruption Effectively"

**Organised by**

Business Ombudsman Council jointly with the U.S.-Ukraine Business Council

18/09

Meeting with the Deputies of the Verkhovna Rada of Ukraine concerning the Draft Law #3607

**Organised by**

The Verkhovna Rada of Ukraine

21/09

Expert Group Meeting on Development of a Corruption Risk Assessment Toolkit for SMEs in the MENA Region

Organised by

The United Nations Office on Drugs and Crime (UNODC)

22/09

LBS TAX TALKS # 2 "Suspension of Tax Invoices and Inclusion in the Lists of Risky Taxpayers"

Organised by

Ukrainian Advocates' Association and «Law & Business Studio» (LBS)

24/09

Presentation of the results of the Fifth Annual Opinion Poll of Exporters and Importers

Organised by

Institute of Economic Research and Policy Consulting

24/09

ACC Online Meeting with the Prime Minister of Ukraine Denys Shmyhal

Organised by

American Chamber of Commerce in Ukraine

25/09

Kick off event of the new UN Global Compact program "Anti-Corruption Collective Action in Ukraine"

**Organised by**

UN Global Compact

25/09

Online briefing with the Ambassadors of Ukraine in Qatar, Kuwait, the UAE and the Kingdom of Saudi Arabia

Organised by

Exporters and Investors Council under the Ministry of Foreign Affairs of Ukraine

28/09

Meeting of the National Anti-Corruption Policy Council chaired by the President of Ukraine

**Organised by**

National Anti-Corruption Policy Council

29/09

Meeting with Administration of the Main Department of the State Tax Service in Kyiv City


**Organised by**

State Tax Service in Kyiv City

**INDEPENDENTLY.
CONFIDENTIALLY.
FREE OF CHARGE.**



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Council



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